THE FINANCIAL SERVICES ROUNDTABLE

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November 13, 2008

via email at comments@fdic.gov

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

Re: Interim Rule: Temporary Liquidity Guarantee Program (RIN # 3064–AD37)

Dear Mr. Feldman:

The Financial Services Roundtable[1] ("Roundtable") appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") Temporary Liquidity Guarantee Program ("TLGP"). While we are generally supportive of the implementation regulations, the Roundtable has the following comments on specific provisions that need further clarification in order for our members to decide to opt in to the TLGP.

Transaction Account Guarantee Program

Definition of "Noninterest-bearing Transaction Account"

According to the TLGP, a "noninterest-bearing transaction account" is defined as a "transaction account with respect to which interest is neither accrued nor paid and on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal." Section 370.2(h)(2) of the Interim Rule states that this "does not include, for example, a negotiable order of withdrawal (NOW) account or money market deposit account (MMDA) as those accounts are defined in 12 CFR 204.2."

We recommend that the FDIC revise the rule so the "noninterest-bearing transaction account" includes NOW accounts as well as demand deposit accounts. This would have the advantage of

[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $66.1 trillion in managed assets, $1.1 trillion in revenue, and 2.5 million jobs.

allowing the term "transaction account" to have the same meaning as in the Federal Reserve Board's Regulation D and thus avoids potential confusion that could arise by having different meanings. In practice, there are probably very few noninterest-bearing NOW accounts, and thus the impact on deposit coverage would be minimal. However, because some institutions do have some noninterest-bearing NOW accounts, allowing those accounts to be included in "noninterest-bearing transaction accounts" would also make it somewhat easier to provide the lobby notice disclosure required for these types of account, since it would then be possible to refer to the types of accounts covered by the unlimited deposit insurance as checking accounts that do not pay interest, and there would be no need to use technical terms such as "demand deposit account," "transaction account" or "NOW account", which may not comply with the requirement that the lobby notice be "in simple, readily understandable text."

Definition of Savings Deposit Account

Section 370.4(c) states, "[n]otwithstanding paragraph (b) of this section, in the case of funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account, the FDIC will treat the swept funds as being in a noninterest-bearing transaction account. As a result of this treatment, the funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings account will be guaranteed under the transaction account guarantee program." The interim rule does not define the term "savings deposit account." We believe it would be helpful if the FDIC would indicate that this term has the same meaning as in Regulation D, which would then clearly include money market deposit accounts as a type of noninterest-bearing savings deposit account into which the funds in this exception could be swept.[2]

Model Disclosure

Section 370.5(h)(3) of the Interim Rule requires insured depository institutions to post a notice in the lobby of their main office and each branch clearly indicating whether the entity is participating in the guaranteed transaction account guarantee program and, for those entities electing to participate, such notice must further clearly state that funds held in noninterest-bearing transaction accounts at such participating entity are insured in full by the FDIC and that sweep arrangements that result in funds being transferred to an interest-bearing account or a nontransaction account will void the FDIC's guarantee. In order to avoid confusion and ensure consistency across institutions, the FDIC should provide a model disclosure for use by participating institutions. Attachment A is a draft model disclosure that could serve as the basis for the FDIC's official form.

[2] The Roundtable notes that this comment was addressed in the FDIC's most recent version of Frequently Asked Questions (November 7, 2008). As such, we recommend that the FDIC amend the TLGP to correspond to the Frequently Asked Questions and specifically, to clarify that a noninterest-bearing MMDA is considered a noninterest-bearing savings deposit account.

Deposit Reclassification Programs Should be Expanded

By providing unlimited deposit insurance coverage to non-interest bearing transactional accounts, the FDIC accomplishes its goal of increasing liquidity in the system. In the Interim Rule and the accompanying Frequently Asked Questions, the FDIC clarifies that unlimited deposit insurance coverage is available to deposit reclassification programs within the TLGP by providing guidance for sweeps from a non-interest bearing transaction account to a non-interest bearing savings account. As we state above, the inclusion of these programs is necessary. Unfortunately, however, by attempting to clarify that the inclusion of such deposit reclassification programs in the TLGP, the FDIC is narrowly defining such programs and is essentially excluding other types of mechanisms under which these programs operate, as well as other types of deposit reclassification programs, such as those using time deposits. Such exclusions would create unnecessary technical and operational challenges to institutions.

As such, the Roundtable recommends that the FDIC extend its unlimited deposit insurance coverage to all non-interest bearing transaction accounts, regardless of the type of deposit reclassification program or operational mechanism used.

Debt Guarantee Program

Federal Funds

Under the TLGP's debt guarantee program, senior unsecured debt includes federal funds purchased. Federal funds are overnight borrowings from banks to ensure their bank reserves at the Federal Reserve. A federal funds balance greater than the reserve requirements enables financial institutions to lend reserves to those with balances lower than reserve requirements.

By including federal funds, the FDIC is limiting a banks ability to borrow on a guaranteed basis in the federal funds market to its overall TLGP defined capacity. The Roundtable believes that this lack of certainty that a good-faith seller of federal funds might not be protected from losses when a buyer (either intentionally or unintentionally) represents that a purchase transaction is covered by the TLGP will hinder the effectiveness of the TLGP and serve to propagate stresses on the interbank lending market and increase the liquidity risk of financial institutions.

Additionally, the rule requires that to be eligible for the debt guarantee program all senior unsecured debt (inclusive of federal funds) must be evidenced in a written agreement and that it must be clearly identified in writing as "guaranteed by the FDIC". As there are no written agreements in the federal funds market, this will create added complexity and further the disruption.

As a result, there is hesitancy among some of our members to participate in this aspect of the TLGP. The Roundtable offers three alternatives to the current Interim Rule: 1) Guarantee Federal Funds on an Unlimited Basis and Reduce the Transaction Fee to a More Reasonable

Level; 2) Eliminate Federal Funds from the TLGP; or 3) Provide Additional Protection to Lenders Acting in Good Faith.

1) Guarantee Federal Funds on an Unlimited Basis and Reduce the Transaction Fee

We recommend that federal funds transactions be guaranteed on an unlimited basis by the FDIC and that the fee on these transactions be reduced to a fee that is more closely aligned with current market pricing. As discussed below, the Roundtable suggests a fee in the range of 10 to 15 basis points

As previously discussed, the Interim Rule requires that all senior unsecured debt (including federal funds) be evidenced by a written agreement and clear identification as "guaranteed by the FDIC" in order to be eligible for the debt guarantee program. However, in the federal funds market, there quite often are no written agreements and so the TLGP's written agreement rule will have the unintended consequence of creating added complexity without materially stabilizing the inter-bank lending market. By guaranteeing all federal funds transactions on an unlimited basis, the written agreement requirement is not necessary. Instead, institutions will be able to track which counterparties are TLGP participants simply by checking the list on the FDIC website.

To ensure that institutions do not utilize this unlimited guarantee of federal funds transactions in excess, we suggest that the FDIC consider the application of a penalty rate based on the average amount of federal funds in conjunction with an institution's total asset base.

Given current interest rates, a 75 basis points fee is too high. By effectively doubling the cost of overnight borrowing, many banks will choose to fund themselves through less expensive secured borrowing sources such as at the Federal Reserve's Discount Window, through the Federal Reserve's Term Auction Facility, or by drawing on advances from the Federal Home Loan Bank ("FHLB"), which will result in further reduced interbank lending and liquidity in the banking system. Therefore, we propose that the FDIC reduce the fee to an amount more closely aligned with current market rates, which we believe to be in the range of 10 to 15 basis points.

2) Exclude Federal Funds

Because uncertainties remain with the current Interim Rule, if the FDIC does not decide to accept the Roundtable's prior recommended treatment of federal funds, we recommend that federal funds be excluded from the definition of "senior unsecured debt" and consequently, from the debt guarantee program. As currently implemented by the Interim Rule, the operational complexities and inherent market inefficiencies of the FDIC's guarantee of federal funds far outweigh the incremental and isolated pockets of increased liquidity in the banking system.

3) Provide Additional Protection to Lenders Acting in Good Faith

To the extent the FDIC does not agree to guarantee federal funds transactions on an unlimited basis or eliminate federal funds from the TLGP, we request that the FDIC explicitly create a safe harbor for lenders acting in good faith. Due to the nature of the federal funds market, it will be extremely difficult, and perhaps impossible, for a lender to track whether an institution has remaining capacity under the TLGP. While the Roundtable supports the FDIC's imposition of penalty fees on institutions that miscalculate or misrepresent their guaranteed capacity, we believe that the TLGP's underlying principles to preserve confidence and encourage liquidity in the banking system will be far advanced by the FDIC extending an explicit guarantee to banks that are lending in the market in good faith and in reliance upon appropriate representations obtained from the counterparty.

Backed by the Full Faith and Credit of the U.S. Government

As defined in the current Interim Rule, the FDIC guarantee on senior unsecured debt does not guarantee principal and interest when due. However, investors in senior unsecured debt and lenders of this debt have very different expectations regarding payment of interest (and the timely return of principal) than do bank depositors and purchasers of certificates of deposit. Senior unsecured debt investors/lenders will demand an unconditional guarantee of timely payment of interest and principal at stated maturity in exchange for their investment in debt securities at tighter spreads compared to non-guaranteed debt securities.

We strongly urge the FDIC to clarify that the TLGP provides an unconditional guarantee on senior unsecured debt backed by the full faith and credit of the U.S. Government. This ensures payment of principal and interest as it becomes due and payable without acceleration and will eliminate investor uncertainty around timing of payments, delays associated with bankruptcy proceedings and the possibility of the senior unsecured debt losing its AAA rating.[3]

Additionally, the target investors for the senior unsecured debt (those providing the greatest potential demand at the most attractive price to the issuer) primarily hold government and agency debt and are completely averse to prepayment and credit risk. A significant tiering in the market based on investors' perceptions of the underlying credit risk of participating banks is likely to develop without the modifications we suggest. Therefore, the current version of the guarantee creates a significant risk that only institutions of the highest credit quality could efficiently access the market which negates the stated goals of the TLGP. We believe that any guarantee provided under the TLGP that falls short of an obligation to pay all amounts due when they are scheduled to be paid will ***significantly curtail*** investor demand for the senior unsecured debt.

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[3] For example, Standard & Poor's released guidance on November 10, 2008 ("U.S. Guarantees Of Bank Debt Under Interim Rules Do Not Promise Timely Payment") that stated the guarantee on TLGP debt must be "unconditional, irrevocable, and timely" in order for them to rate the debt at a AAA level. See www.standardandpoors.com.

Without this clarification, we are concerned that a significant premium may be demanded by investors purchasing debt securities issued by US banks as compared to United Kingdom banks under the "United Kingdom's 2008 Credit Guarantee Scheme" that provides more explicit protection to investors.

Further to this point, the FDIC's recent Frequently Asked Questions (November 7, 2008) states that "Senior unsecured debt that is guaranteed under the Temporary Liquidity Guarantee Program will have a risk weight of 20 percent." This clearly subordinates US guaranteed debt from obligations placed in Europe, which carries a 0% risk weighting, and is likely to materially alter the targeted investor base. This would consequently result in a less competitive position in the global marketplace, as well as, less attractive pricing for U.S. issuers.

Guarantee Should Cover 364-day Revolving Credit Agreements

The FDIC should also clarify that the guarantee can cover 364-day revolving credit agreements that are entered into and fully drawn down at least once before June 30, 2009. Unfortunately, some of our members have had recent experiences in which banks are not willing to enter into credit agreements longer than 364 days, regardless of whether or not such agreements are to be renewed for subsequent 364-day periods. To alleviate this problem, the FDIC should confirm that agreements drawn down after June 30, 2009 would be subject to the guarantee if the original agreement was fully drawn down at least once before that date, notwithstanding paydowns or agreement renewals that subsequently occur.

Senior Unsecured Debt - Capacity

Senior unsecured debt capacity under the Interim Rule is derived from an institution's senior unsecured debt that was outstanding on September 30, 2008 and maturing before June 30, 2009. As a result, eligible institutions that relied heavily on short-term borrowings will receive a significantly higher guaranteed issuance capacity under the TLGP than those institutions that more prudently managed their liability profile. Rather than apply a one-size-fits-all rule, we recommend that the FDIC explicitly provide an alternative mechanism for determining the guaranteed debt capacity cap.

The Roundtable proposes that the FDIC allow institutions to elect between a 5% of total assets test (calculated as of September 30, 2008) and the current test of 125% of senior unsecured debt outstanding on September 30, 2008 and that matures before June 30, 2009. An alternative calculation of debt issuance capacity based on total assets will ensure that financial institutions of all sizes have an immediate opportunity to take full advantage of the TLGP regardless of prior liquidity management and funding decisions measured as of subsequent date. A total assets test also provides TLGP participants and investors with a higher degree of certainty for issuance capacity than that under the Interim Rule, where the FDIC and the eligible institution's primary federal regulator make a determination on extra capacity only upon request.

A distinctly possible and unintended consequence of the Interim Rule's process for requesting and granting extra capacity is that investors and counterparties could mistakenly interpret this granting of extra capacity as a sign of deep financial distress. This would undercut the very purpose of the TLGP to provide liquidity to the interbank lending market and promote stability in the unsecured funding market for banks. The Roundtable believes that an alternative test to calculate the guaranteed issuance capacity cap, such as a total assets test, will effectively alleviate these concerns.

Eliminate Requirement for Written Statement of Guaranteed or Non-Guaranteed Debt; Required that Information be Conveyed to Investors in "Commercially Reasonable Manner"

The Interim Rule states that "[i]f an eligible entity does not opt out of the debt guarantee program, it must clearly identify, in writing **and** in a commercially reasonable manner, to any interested lender or creditor whether the newly issued debt offering is guaranteed or not."[4] The Roundtable recommends eliminating the requirement that all offered debt be accompanied by a written statement that it is guaranteed or non-guaranteed debt. Rather, we recommend that such information only be required to be conveyed to investors in a "commercially reasonable manner."

First, many types of senior unsecured debt, such as federal funds and overnight commercial paper, currently are not evidenced by a debt instrument with documentation that can accommodate "guaranteed by the FDIC." At best, participating entities would need to include this disclosure in a confirmation or separate, accompanying documentation for this type of debt, which would be logistically very difficult and likely not a very effective means of conveying this information to the investor in many cases. Second, the market for this kind of paper consists of large, sophisticated, institutional investors that generally can be expected to know, based on their own due diligence and market experience, whether a particular institution is participating in the FDIC's debt guarantee program (which can be confirmed by simply checking the FDIC's website) and the kinds of instruments that would qualify as "senior unsecured debt" covered by the program. In light of these practical realities, a mandated written disclosure is unnecessary and would only complicate the process of issuing debt under the guarantee program without appreciably enhancing investor protection.

If such requirement is not removed, additional complications would result and the following questions from the disclosure requirement must be addressed in some fashion by the FDIC.

- Since this prescribed disclosure is a part of the definition of "FDIC-Guaranteed Debt" and eligible entities that have issued covered senior unsecured debt since the effective date of October 14, 2008 routinely have not made this "guaranteed by the FDIC"

[4] FDIC Interim Rule, § 370.5(h)(2).

disclosure, such debt literally is not within the definition of "FDIC-Guaranteed Debt"[5] and consequently, the debt instrument has not been clearly identified in writing to be "guaranteed by the FDIC."

- Does the Interim Rule imply that an eligible entity only needs to begin providing the "guaranteed by the FDIC" disclosure once it has notified the FDIC that it has opted in or if it has not opted out of the program by December 5, 2008?

- Does this imply that an eligible entity only needs to provide interested lenders or creditors (*i.e.* those who request it) with a disclosure that the newly issued debt offering is guaranteed by the FDIC?

Clarification on the Definition of "Senior Unsecured Debt"; Definitional Issues Unnecessarily Expose Participating Entities to Legal Liability

The definition of "senior unsecured debt"[6] is **critical** to determine and report the 125% maximum (cap) based on senior unsecured debt outstanding as of September 30, 2008[7] **and** to determine and disclose whether newly issued debt is senior unsecured debt subject to the guarantee.[8] However, the Interim Rule is ambiguous on whether various types of debt qualify as senior unsecured debt for purposes of the guarantee. Specifically, the Roundtable seeks clarification on whether the following types of unsecured debt fall within the definition of "Senior Unsecured Debt":

- Inflation-linked securities with a fixed principal amount;
- Index-linked, principal protected securities;
- Putable bonds (similar in concept to demand notes);
- Callable bonds;
- Extendible securities;
- Retail debt securities (debt with $25 par value and listed on NYSE).

Additionally, the definition of "senior unsecured debt" may include debt denominated in a foreign currency. There is some ambiguity around this portion of the definition. As such, the Roundtable recommends clarification whether or not such debt would include foreign denominated issuances settled in U.S. dollars.

"Senior unsecured debt" also includes certain deposits standing to the credit of (owed to) a bank. "Bank" is defined in part as "a depository institution regulated by a foreign supervisory agency." Does this term include central banks and other similar non-US government entities that perform central bank functions? If so, we recommend that such institutions be excluded from the

[5] FDIC Interim Rule, § 370.2(i).
[6] FDIC Interim Rule, § 370.2(e).
[7] FDIC Interim Rule, § 370.3(b).
[8] FDIC Interim Rule § 370.3(d), § 370.5(f).

definition of "bank" under this provision. Additionally, this section of the definition should be clarified to exclude such amounts when the depositor bank is acting in a custodial or representative capacity for funds belonging to others.[9]

Such ambiguity surrounding the definition of "senior unsecured debt" may result in significant legal exposure for borrowers/issuers under securities and banking laws, such as the Unfair and Deceptive Acts and Practices Act or securities fraud. An incorrect label of debt as "guaranteed" when in actuality it is not guaranteed (or vice versa) may subject institutions to legal claims that they misrepresented the guaranteed status of the particular instrument in question.

Therefore, it is important for the FDIC to clearly define the types of instruments that constitute "senior unsecured debt," as we previously recommended.

Ability to Issue Non-Guaranteed Senior Unsecured Debt

Clarification on FDIC Discretion

The Interim Rule permits the FDIC to authorize "[u]nder certain circumstances and subject to certain conditions . . . a participating entity [to] issue senior unsecured debt that is not subject to the guarantee."[10]

The Roundtable believes that this reservation of discretion by the FDIC is appropriate and important. In order to avoid any ambiguity regarding the FDIC's discretion, the Roundtable recommends that the FDIC highlight and clarify its discretion to tailor the operation of the debt guarantee program so as to maximize its positive benefits.

Specifically, it would be constructive for the FDIC to clarify that a participating entity may offer short-term non-guaranteed senior debt or authorize guaranteed debt to be used to prepay pre-existing non-guaranteed debt. Importantly, such a change would clarify that the debt guarantee program and the Federal Reserve Board's Commercial Paper Funding Facility ("CPFF") will operate in a wholly complementary manner and ensure that the terms of the debt guarantee program will not operate so as to limit use of the CPFF.[11]

The requested change would also clarify that the FDIC can allow a participating entity that has outstanding non-guaranteed commercial paper ("CP") to prepay that CP with CP issued through the CPFF and thus provide liquidity to the holders of existing non-guaranteed CP prior to the

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[9] The Roundtable notes that this comment was addressed in the FDIC's most recent version of Frequently Asked Questions (November 7, 2008). As such, we recommend that the FDIC amend the TLGP to correspond to the Frequently Asked Questions and specifically, to clarify that deposits held in a custodial capacity are not considered "standing to the credit of the bank."

[10] FDIC Interim Rule, §370.3(b).

[11] On October 14, the TLGP and CPFF were announced as major complementary initiatives to restore the functioning of the credit markets. To maximize the beneficial effects of these programs, it is important that entities eligible to participate in each be able to do so to the maximum extent under each.

date of maturity. Many holders of existing commercial paper, including large institutional investors, medium-sized commercial companies and municipalities, have liquidity requirements that require the sale or redemption of paper prior to maturity. As long as the secondary markets for CP are not functioning robustly, it is important for CP issuers to have the opportunity to provide liquidity through a prepayment option. As a corollary, it would be constructive for the FDIC to make explicit its discretion to determine, in an appropriate case, that a participating entity could issue CP that is not FDIC-guaranteed through the CPFF and to permit proceeds of FDIC-guaranteed paper issued under the program to be used to repay nonguaranteed CP.

The requested clarification would ensure the integrity of the debt guarantee program while also ensuring that generally appropriate debt guarantee program rules do not have adverse consequences, *e.g.*, for participating entities that also have been active issuers and purchasers of CP. This clarification should highlight that the FDIC has discretion to allow debt guarantee program debt to be used to prepay non-guaranteed CP in an appropriate case, or to allow a participating entity to prepay nonguaranteed CP with new nonguaranteed CP issued through the CPFF. It would be counter to the original intent of both the TLGP and the CPFF to deny any participating entity that has an established CP program the ability to work with the FDIC so that it can redeem CP prior to maturity, on a guaranteed or non-guaranteed basis, and thus provide liquidity to businesses and governmental agencies that have historically managed their liquidity needs through the CP markets.

In view of the importance of such flexibility, the silence of the accompanying preamble, and the possibility that some might view the Interim Rule as unclear,[12] we believe it is important for the FDIC to state clearly that the FDIC has discretion, on a case-by-case basis, to tailor the operation of the Final Rule to maximize the positive effects of the TLGP and other federal programs addressing the credit crisis. Such a clarification can be added within a new section (*i.e.* §370.3(i)), stating:

> "In appropriate circumstances and under appropriate conditions, the FDIC may authorize a participating entity to issue new unsecured senior debt to redeem or retire existing unsecured senior debt, on a guaranteed or non-guaranteed basis, through the Federal Reserve's Commercial Paper Funding Facility or by other lawful means."

<u>Ability to Issue Non-Guaranteed Senior Unsecured Debt (Other than Federal Funds) Regardless of the Stated Maturity</u>

The Interim Rule also provides that participating institutions may elect to issue non-guaranteed senior unsecured debt before June 30, 2009 (without first issuing and reaching the cap for its guaranteed debt) <u>only if</u> they pay a minimum upfront fee of 37.5 basis points and the stated

[12] We note that Section 370.3(b) is wholly consistent with section 370.5(f), which plainly states that a *participating entity* cannot choose to issue non-guaranteed debt, except under the long-term debt option, but in no way limits the FDIC's discretion to allow exceptions under 370.3(b).

maturity of this non-guaranteed debt is after June 30, 2012.[13] The Roundtable assumes that the FDIC's objective with this provision is to avoid a perception that electing institutions really do not need the FDIC guarantee and therefore are in a stronger position than institutions that issue FDIC-guaranteed debt. In reality, however, the market will understand the valid economic reasons for issuing some debt on a non-guaranteed basis; for example, some classes of buyers who want to take higher risk to obtain higher yields. Moreover, the market will know – as reflected in credit spreads and trading prices – and will understand the perceived quality of such institutions, even if all eligible debt issued by the participating entities were to be guaranteed. As such, the Roundtable recommends that participating institutions have the ability to issue non-guaranteed senior unsecured debt regardless of the stated maturity and without the requirement of an upfront fee. This will provide institutions with more flexibility to make the best economic decisions for their organizations and manage their maturities in a more prudent manner.

As written, the limitations placed on the issuance of non-guaranteed debt create a number of concerns. If an issuer chooses not to pay the upfront fee and issues debt with maturities that extend past the guarantee period, it is likely that they will be charged by the market a price similar to that as if the debt was non-guaranteed, even though they will have to pay the FDIC a fee for the guarantee. This will incent institutions to issue debt that comes due within the guaranteed window rather than extending out their maturity profile when opportunities arise.

However, to the extent banks chose to pay the additional fee there is a strong likelihood that a sizeable amount of issuance will be structured to mature shortly after June 30, 2012 as institutions are unable to issue non-guaranteed debt that matures before that date. This could create significant roll over risk for institutions in 2012.

Even as written, select institutions will have the ability to issue both guaranteed and non-guaranteed debt without paying an upfront fee as some of their entities may have no capacity to issue insured debt, or may not be eligible for the program. As such these institutions have an advantage over those with capacity at all of their institutions.

If the FDIC chooses to maintain the upfront fee, we request that it be refundable should the participating institution refrain from issuing guaranteed debt. Many banks will participate in the program to ensure that they retain access to the markets, but to the extent they do not need to raise unsecured funding they should not be penalized.

Clarify the Impact of a Merger of One Participating Entity into Another Participating Entity

Due to the current turmoil in the financial system, a number of financial institutions are in the process of closing on acquisitions of other financial institutions. It is unclear under the Interim Rule how such a merger during the Guarantee Period would affect the surviving entity's 125%

[13] FDIC Interim Rule, § 370.3(f).

maximum guarantee basis amount calculation. Would the merged participating entity's 125% guarantee limit basis be eliminated, or would it be added to the 125% guarantee limit basis of the surviving participating entity, such that the guarantee limit of the surviving entity would be equal to the combined 125% guarantee limit amounts of both entities? The Roundtable recommends that the FDIC clarify the calculation of a surviving participating entity's 125% limit in the context of a merger of participating entities such that the guarantee cap of the surviving entity equals the combined guarantee cap amounts of both entities calculated on a *pro forma* basis as of September 30, 2008.

Inclusion of Capital Lines of Credit Secured by Bank Stock

Many banks benefit from lines of credit extended by other banks that make revolving and term loans, and issue letters of credit to bank holding companies secured by a stock pledge of the bank stock. As a practical matter, if a bank defaulted on its loan, the stock is not readily saleable and as some banks are privately held, there is no market to sell such stock or realize any value from the collateral. If banks refused to renew such lines because they were not covered under the TLGP program, some banks would lose a source of liquidity. Therefore, we recommend that working capital lines of credit secured by bank stock be included in the TLGP debt guarantee program. Alternatively, the FDIC could identify what steps, including release of the bank stock, would be required so that such loans would be covered under the program.

Senior Unsecured Debt- Disclosure

It is imperative that the FDIC provide standard disclosure language for the guarantee. This will be critical to ensure the uniformity of the securities that are offered by participating institutions.

Restriction on Use of Proceeds

The FDIC has stated that an eligible institution is not permitted to use the proceeds of guaranteed debt issuances to prepay its non-guaranteed debt. We request that the FDIC provide additional guidance on the ability of entities that chose to remain in the TLGP to repurchase unsecured debt (both senior and subordinated) with proceeds from other, non-TLGP sources of funds in both open market and privately arranged transactions.

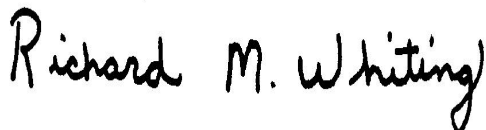
The Roundtable believes that preserving flexibility of a financial institution to elect to repurchase or prepay existing senior and subordinated debt, and thereby replacing higher-cost and/or shorter-term funding with lower-cost and/or longer-term funding based on economically attractive liability management decisions, will result in these institutions having a stronger balance sheet and enhanced liquidity position. Creditworthy businesses and consumers also will benefit from banks having stronger balance sheets. Funds used to repurchase securities also provide much needed liquidity to investors in the capital markets.

The Roundtable recognizes the inherent difficulties faced by the FDIC in tracking how proceeds from guaranteed debt issuances are used by TLGP participants. Accordingly, we request the FDIC to provide guidance confirming that repurchases of senior and subordinated debt at entities with no issuance capacity under the TLGP's 125% cap test are permissible and will not preclude or otherwise taint an affiliated TLGP participant who desires to separately issue FDIC-guaranteed debt.
To the extent the FDIC does not agree to provide any of the clarifications discussed above, the Roundtable asks the FDIC to consider allowing TLGP participant's to obtain approval to execute debt repurchases and/or prepayments on such terms as may be agreed to by the FDIC and the eligible institution's primary federal regulator.

CONCLUSION

Thank you again for the opportunity to share our views with you on this subject. We appreciate the leadership role the FDIC has taken during this current market turmoil. In the meantime, if you have any questions, please feel free to contact me or Melissa Netram at 202-289-4322.

Sincerely,



Richard M. Whiting
Executive Director and General Counsel

ATTACHMENT A

NOTICE
REGARDING
THE TEMPORARY LIQUIDITY GUARANTEE PROGRAM
OF THE
FEDERAL DEPOSIT INSURANCE CORPORATION

[Financial Institution] is participating in the FDIC's transaction account guarantee program.

Funds held in noninterest-bearing transaction accounts are insured in full by the FDIC until December 31, 2009.

Sweep arrangements that result in funds being transferred to an interest-bearing account will void the FDIC's guarantee.

A "transaction account" is an account on which the bank does not reserve the right to require advance notice of an intended withdrawal (for example, a checking account).

Deposit accounts other than noninterest-bearing transaction accounts are not covered by this program, but are insured up to $250,000 until December 31, 2009.