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November 13, 2008

By E-Mail to Comments@FDIC.gov

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

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

Ladies and Gentlemen:

Deutsche Bank AG, Frankfurt, Germany (“**Deutsche Bank**”) commends the Federal Deposit Insurance Corporation (the “**FDIC**”) for developing the Interim Rule regarding the Temporary Liquidity Guarantee Program, 73 Fed. Reg. 64179 (the “**TLGP**”). We believe the TLGP is a positive step towards stabilizing credit markets and removing systemic risks from the financial system as a whole.

This comment addresses aspects of the TLGP that Deutsche Bank believes should be modified to make it a more useful tool to help stabilize the U.S. financial system. Deutsche Bank controls two U.S. subsidiary banks that offer non-interest bearing transaction accounts that, pursuant to the TLGP, would be eligible for coverage by the FDIC’s temporary unlimited guarantee of funds in such accounts (the “**Transaction Account Guarantee Program**”). These two banks, along with Deutsche Bank’s two U.S. bank holding companies, would be eligible to issue senior unsecured debt having the benefit of the FDIC’s temporary guarantee (the “**Debt Guarantee Program**”). In addition, Deutsche Bank owns a U.S. broker-dealer that is a leading global underwriter of fixed income securities for financial institutions.¹ Accordingly, Deutsche Bank is positioned to address the TLGP from the perspective of bank and bank holding company issuers as well as from a broader capital markets perspective.

¹ Deutsche Bank AG controls two wholly-owned U.S. bank holding company subsidiaries, Taunus Corporation and Deutsche Bank Trust Corporation, which control Deutsche Bank Trust Company Americas, a New York state chartered Federal Reserve member bank, and Deutsche Bank Trust Company Delaware, a Delaware state chartered nonmember bank. Taunus Corporation also indirectly controls Deutsche Bank Securities Inc., one of the largest broker-dealers in the country.

Our comments are most extensively addressed to the temporary guarantee of newly-issued senior unsecured debt (“**Guaranteed Debt**”) under the Debt Guarantee Program. We also address aspects of the Transaction Account Guarantee Program that we believe make it virtually impossible for any participating financial institution to accurately calculate the insurance premium surcharge applicable to accounts guaranteed under that program, and suggest that the only practical remedy is to levy a lower basis point surcharge on all deposits, or all non-interest bearing transaction account balances.

DEBT GUARANTEE PROGRAM

Our comments are designed to help the FDIC refine the Debt Guarantee Program so as to encourage participation among eligible financial institutions and maximize its benefits from a capital markets perspective by enhancing the marketability of Guaranteed Debt and ensuring orderly program execution for all participating financial institutions. We are particularly focused on the important role that properly structured Guaranteed Debt will play in enabling financial institutions to manage through sizable debt maturities being faced over the next 12 to 24 months while promoting lending and investing in the broader economy.

We have identified six principal features of the Debt Guarantee Program that we believe warrant reconsideration:

1. **Definition of Senior Unsecured Debt.** Sweep products, regardless of form (e.g., Fed funds, commercial paper and interbank deposits), and overnight deposits should be excluded from the definition of “senior unsecured debt;” or, in the alternative, bank holding companies should be permitted to make a different opt-in/-out decision from their affiliated insured depository institutions.
2. **Nature of the Guarantee.** The FDIC should modify the Debt Guarantee Program to guarantee timely payment of principal and interest when due, backed by the full faith and credit of the U.S. government.
3. **Tenor of the Guarantee.** The FDIC should extend the guarantee term to five years such that it would expire on June 30, 2014, or allow for a portion of Guaranteed Debt to be guaranteed for up to five years.
4. **Optionality.** Participating financial institutions should be permitted to issue non-guaranteed senior unsecured debt (“**Non-Guaranteed Debt**”) of any maturity at any time.
5. **Replacing Existing Obligations.** The FDIC should provide specific guidance on whether participating financial institutions may exchange Guaranteed or Non-Guaranteed Debt for outstanding non-guaranteed senior unsecured obligations, or tender for outstanding non-guaranteed senior unsecured obligations while Guaranteed Debt remains outstanding.

6. **Coordination of Access.** The FDIC should consider developing guidelines to enable participating financial institutions to better coordinate in accessing the market.

We address each of these points in detail below.

1. The Debt Guarantee Program should not cover overnight deposits or sweep products.

Deutsche Bank believes it is imperative that the FDIC exclude from the Debt Guarantee Program's definition of "senior unsecured debt" all investment options offered to bank clients to provide returns by sweeping excess cash from bank deposit accounts into alternative investments such as commercial paper, interest bearing deposit accounts, and Eurodollars. Similarly, overnight deposits, such as Fed funds and similar inter-bank deposits, should also not be included as senior unsecured debt under the Debt Guarantee Program. First, these overnight products will not benefit from the guarantee. If participating financial institutions seek to pass the guarantee premium cost along to customers, at current rates there would be either no or insignificant yield to the customer; if the institutions do not pass the cost along, the arrangements become unprofitable for them. Note also that a 75 basis point fee is very expensive for covering overnight risk, and it is unlikely that any customer would choose to pay for such insurance. Accordingly, the unintended adverse effect of covering these sweep arrangements under the Debt Guarantee Program may well be to eliminate them, thereby pushing those deposits either out of the participating insured institution (and its holding company, in the case of sweeps to commercial paper); or causing clients to keep the deposits in demand deposit accounts, where they will be fully insured under the Transaction Account Guarantee Program for only 10 basis points, but minimizing those balances to seek profitable investments elsewhere. In either case, the effects will be to reduce the very access to liquidity that the Debt Guarantee Program seeks to provide to banking organizations and/or to increase the costs of the TLGP to the FDIC.

In fact, covering sweep arrangements, combined with the requirement that all affiliated banks and bank holding companies make the same opt-in/-out decision, may cause depository institution organizations to opt out of the Debt Guarantee Program, contrary to the FDIC's intentions. A significant opt-out rate among eligible issuers will, in fact, create the very uncertainty among investors the FDIC hopes to avoid.

Including sweep products may cause other undesirable market distortions. For example, depositors may, to preserve yield, move their accounts from a bank that offers a sweep into covered products, such as commercial paper of an affiliated bank holding company or an interest bearing account, to a bank that offers sweeps into uninsured products, such as repos. Even if the account stays at the participating institution, customers may choose sweep options that result in reducing liquidity for the participating institution, such as sweeps into money market mutual funds. Since the sweep into Guaranteed Debt would yield 75 basis point less off the top, these alternative sweep options would have a meaningful competitive pricing advantage.

Beyond the possible pricing issues and potential loss of liquidity, the incentive for customers to change sweep options could cause operational issues if large numbers of customers seek to change their sweep options within a short period of time following finalization of the TLGP.

Finally, customers understand that, currently, sweep arrangements cause funds to be moved into investments options that are not insured. The fact that some sweep options will be treated as Guaranteed Debt, while others are not, will likely create the very customer confusion the FDIC seeks to avoid.

If the TLGP retains coverage of these sweep products, then the FDIC should allow bank holding companies to opt in to the Debt Guarantee Program even if their subsidiary insured institutions opt out. We do not see any abuse that could occur from allowing such a practice so long as all holding companies within a banking group make the same decision and all insured institutions within the same group make the same decision. This will allow insured institutions to offer overnight Fed funds and certain sweep options without incurring the 75 basis point surcharge, thus preserving their viability as investment options, while preserving the ability of affiliated holding companies to issue commercial paper and other senior unsecured obligations as Guaranteed Debt, thereby providing the liquidity that the Guaranteed Debt Program is intended to generate for banking organizations. Deutsche Bank believes the interbank funding market was already recovering when the TGLP was proposed, thereby decreasing the necessity to guarantee substantially all interbank funding alternatives. Furthermore, now that funds kept at a Federal Reserve Bank reserve account yield interest at or close to the effective Fed funds rate, there is no incentive for a bank to sell Fed funds to a troubled insured institution, especially if the seller would have to wait for a full resolution of the receivership to recover just the principal of the Fed funds transaction.

In short, Deutsche Bank believes that there are many potential adverse consequences to covering sweep arrangements and overnight deposits as Guaranteed Debt that significantly outweigh any potential benefits.

2. The Debt Guarantee Program should provide holders of all Guaranteed Debt, whether issued by participating insured depository institutions or holding companies, with an unconditional guarantee of timely payment of principal and interest when due, backed by the full faith and credit of the U.S. government.

Without an explicit payment guarantee backed by the full faith and credit of the U.S. government, Guaranteed Debt will provide investors with less protection than debt issued by foreign financial institutions under other countries' debt guarantee programs and, as a result, will likely receive less interest from investors and trade at wider levels.

We anticipate that the most natural and accessible investor base for Guaranteed Debt will be comprised of the same investors that commonly purchase sovereign and government agency debt securities. These investors, which include fund managers, pension funds and

central banks, are particularly focused on ensuring timely receipt of scheduled payments of interest and principal with minimal credit risk exposure. In its present form, the Debt Guarantee Program does not sufficiently meet these investment criteria.

In order to fully appreciate this concern, it is useful to contrast the Debt Guarantee Program with the U.K. Treasury's recently enacted Credit Guarantee Scheme (the "**U.K. Guarantee**"), which has already allowed participating U.K. financial institutions to raise over \$15 billion of euro- and pounds sterling-denominated guaranteed debt financing. Unlike the U.K. Guarantee, which guarantees payment following any failure by the issuer to make a scheduled payment when due, the FDIC's guarantee obligation under the Debt Guarantee Program only arises "upon the failure of a participating insured depository institution" or "when the holding company files for bankruptcy protection."

Furthermore, in the event of a participating financial institution's bankruptcy, the Debt Guarantee Program is unclear as to exact timing of when the FDIC will make guarantee payments. In the case of Guaranteed Debt issued by a participating insured depository institution, the FDIC commits only to "pay claims related to its debt guarantee expeditiously and . . . strive to make payment on the next business day after the claim is determined to be valid." With respect to Guaranteed Debt issued by a participating holding company, although the FDIC will "strive to expedite the claims payment process," payment will not be made "unless and until the claim for the unsecured senior debt has been determined to be an allowed claim against the bankruptcy estate and such claim is not subject to reconsideration under 11 U.S.C. 502(j)." Given that this bankruptcy claim certification process may take a substantial amount of time, it is likely that the Debt Guarantee Program will create significant credit tiering between depository institution-level and holding company-level debt. In contrast, the U.K. Guarantee simply requires the U.K. Treasury to make guarantee payments to investors following non-payment upon demand and without delay other than "any applicable grace period."

The issue of payment timing under the Debt Guarantee Program is also critical from a credit ratings standpoint. In a report dated November 10, 2008, Standard & Poor's Ratings Services indicated that it is evaluating the TLGP and that "[u]nless the [TLGP] is amended to provide a guarantee of timely payment of interest and principal, we would be unable to rate the debt of financial institutions qualifying for the FDIC guarantees at the 'AAA' rating of the U.S. government." If nationally recognized statistical rating organizations do not rate Guaranteed Debt as AAA-equivalent, then investor appetite for the product compared to that for debt issued by sovereigns, government-sponsored agencies and financial institutions covered under foreign guarantees that receive AAA ratings, such as debt that has been issued under the U.K. Guarantee, will be limited.

In addition to this issue of guarantee payment timing, another critical concern surrounding the Debt Guarantee Program is that investors do not have the explicit benefit of the full faith and credit of the U.S. government. In the case of the U.K. Guarantee, the U.K. Treasury explicitly guarantees payment defaults on guaranteed liabilities. Several investors we

have spoken with regarding the Debt Guarantee Program have expressed concern that, as an independent agency of the federal government that does not receive U.S. Congressional appropriations, the FDIC may not have sufficient resources to fulfill all of its guarantee obligations. As recently clarified in a TLGP Frequently Asked Questions release from November 7, 2008, Guaranteed Debt will have a 20% risk-weight for bank investors, rather than the zero percent risk-weight that applies to an instrument with an explicit government guarantee, such as debt issued under the U.K. Guarantee. This risk-weighting differential will increase capital costs for bank investors to hold Guaranteed Debt and, by association, funding costs for U.S. financial institutions relative to overseas peers. Although we appreciate that an explicit backstop of the Debt Guarantee Program by the U.S. Treasury could impact the funding abilities of other U.S. government agencies, we believe that the FDIC should take additional steps for the benefit of investors to clarify and strengthen the exact nature of its guarantee.

3. The Debt Guarantee Program should be extended in whole or in part to allow participating financial institutions to issue debt with maturities of up to five years.

Ensuring strong market reception for Guaranteed Debt will be essential for the success of the Debt Guarantee Program. As such, issuance will need to be targeted to various parts of the curve and to various investor types in order to absorb what we believe will be significant refinancing activity. While we think that the market for debt maturing in three years or less is liquid, particularly for supra-national and government-guaranteed notes, we are concerned that there may not be sufficient liquidity to absorb all potential supply. Accordingly, unless the FDIC extends the Debt Guarantee Program beyond three years, investors may require participating financial institutions to pay significant price concessions.

A substantial number of sovereigns and government-sponsored agencies have recently issued debt with maturities of three years or less that could crowd the market for Guaranteed Debt. As an example, Freddie Mac, Fannie Mae and the Federal Home Loan Banks have issued a combined total of over \$400 billion of two- and three-year debt, as well as another \$4 trillion of discount notes, during 2008. In addition to this significant government-sponsored agency issuance, the U.S. Treasury is planning to issue over \$500 billion of two- and three-year notes and approximately \$2 trillion of Treasury bills. Limiting all Guaranteed Debt maturities to three years or less will put additional paper into a market that is already well-supplied and may result in increased spreads for participating financial institutions.

An additional consideration for extending Guaranteed Debt maturities beyond three years is that the appetite of traditional credit investors for debt maturing in three years or less has been limited. This year, for example, only approximately 2.5% of total debt issued to credit investors has matured in three years or less. Although we expect that credit investors will not necessarily form a significant part of the investor base for Guaranteed Debt, we believe the Debt Guarantee Program would be best served by appealing to the broadest possible investor base.

An additional concern of limiting the Debt Guarantee Program to three years is that it could challenge many financial institutions' refinancing efforts due to the amount of existing debt maturing over the next three years. For example, banks alone are currently facing approximately \$500 billion of senior debt maturities through December 2012. Adding the expected Guaranteed Debt balances to those maturities will significantly increase refinancing risk for these financial institutions in the future. Extending the coverage of the Debt Guarantee Program so that participating financial institutions have the option to issue debt obligations with the benefit of the FDIC's guarantee for up to five years will greatly reduce these risks.

4. Participating financial institutions should have the option to issue Non-Guaranteed Debt of any maturity at any time.

Financial institutions will also benefit greatly from continuing to have the ability to attract funding from a distinctly separate class of credit investors that would prefer to purchase higher-yielding Non-Guaranteed Debt. The Debt Guarantee Program prevents a participating financial institution from issuing Non-Guaranteed Debt that matures prior to July 1, 2012, until such entity has issued Guaranteed Debt in an amount equal to 125% of the par amount of its senior unsecured debt outstanding at September 30, 2008, that matures before June 30, 2009 (the "threshold cap"). Although we appreciate the FDIC's interest in encouraging participation in the Debt Guarantee Program, we believe that increasing the flexibility of participating financial institutions to issue Non-Guaranteed Debt would be helpful in mitigating overall systemic risk by attracting credit investors to the refinancing efforts.

Giving participating financial institutions increased flexibility to issue shorter-term Non-Guaranteed Debt would also help mitigate potential conflicts between the TLGP and the Federal Reserve's Commercial Paper Funding Facility (the "CPFF"). Because the ability of many participating institutions to issue commercial paper diminished during 2008, and because the CPFF limits are based on outstanding commercial paper at dates earlier than the September 30 date chosen by the FDIC for calculation of the threshold cap, a higher volume of an institution's commercial paper may be eligible for the CPFF than is eligible for the Debt Guarantee Program. Participating institutions should be able to issue unsecured commercial paper as Non-Guaranteed Debt to be offered to the Federal Reserve under the CPFF, thereby eliminating an unnecessary impediment to an institution using the CPFF to provide liquidity in excess of that available under the TLGP.

Affording this optionality to participating financial institutions would have two other benefits. First, Deutsche Bank is concerned that not permitting participating financial institutions to issue Non-Guaranteed Debt that matures prior to July 1, 2012, until the threshold cap has been reached will make it harder to track conformance with the threshold cap, particularly for bank issuers and particularly if sweep products, contrary to our earlier suggestion, continue to be covered under the TLGP. If an issuer can affirmatively decide to issue both Guaranteed Debt and Non-Guaranteed Debt that matures prior to July 1, 2012, then it could more easily track the volume of Guaranteed Debt issued because such issuance would require an affirmative decision. While the FDIC has expressed concern that such optionality

could cause confusion among investors as to whether the debt they are purchasing is Guaranteed or Non-Guaranteed, we believe this is easily addressed by providing uniform guarantee disclosure for all Guaranteed Debt.

Second, as the financial system stabilizes and financial institutions issuers' credit standing improves, spreads between Guaranteed Debt and Non-Guaranteed Debt should narrow. Thus, reliance on the Debt Guarantee Program should decrease, easing transition to the termination of the Debt Guarantee Program.

5. The FDIC should provide specific guidance on the extent to which participating financial institutions may use Guaranteed Debt or Non-Guaranteed Debt to replace or retire outstanding non-guaranteed senior unsecured obligations.

The TLGP states that “[d]ebt cannot be issued and identified as guaranteed by the FDIC if . . . [t]he proceeds are used to prepay debt that is not FDIC-guaranteed,” which would prevent participating financial institutions from using Guaranteed Debt proceeds to pay off outstanding non-guaranteed debt prior to maturity, other than in the case of a scheduled call date. The TLGP is silent, however, as to whether debt-for-debt exchanges or tender offers not involving Guaranteed Debt proceeds would be permitted. It is also unclear whether outstanding non-guaranteed debt may be paid off prior to maturity at any time Guaranteed Debt is outstanding, no matter how beneficial such retirement may be to the participating institution.

Over the next year, management of debt profiles and maturities will be of critical importance to many financial institutions. Strictly prohibiting participating financial institutions from exchanging Guaranteed Debt for existing obligations while simultaneously prohibiting the issuance of short-term Non-Guaranteed Debt until the threshold cap has been reached, or from tendering for such existing obligations even where Guaranteed Debt proceeds are not used, would unnecessarily and perhaps dangerously hamper these institutions' ability to minimize refinancing costs for debt obligations that are scheduled to mature during the life of the Debt Guarantee Program. In addition, some financial institutions, through mergers and acquisitions, will need to manage additional debt maturities of acquired companies. Debt-for-debt exchanges and tender offers can provide financial institutions with an efficient way to manage these issues and provide liquidity and restore investor confidence to the markets. Given the TLGP's ambiguity on this matter, the FDIC should at a minimum clarify its position and, given overall concerns with mitigating systemic risks, consider giving participating financial institutions greater flexibility to use a broader range of liability management tools where cash proceeds from Guaranteed Debt are not involved.

6. **The FDIC should consider developing guidelines to enable participating financial institutions to better coordinate in accessing the market.**

Due to the fact that U.S. financial institutions represent the largest issuer base both by number of issuers and total debt outstanding, plus the fact that the number of institutions qualifying under the Debt Guarantee Program is steadily increasing as more financial institutions (e.g., Morgan Stanley and Goldman Sachs) become eligible bank holding companies, the amount of Guaranteed Debt that will likely be issued in a short time-frame is very large. The FDIC should consider measures to coordinate offerings among participating financial institutions to support price discovery and ensure successful execution and proper secondary support for Guaranteed Debt issuance. To accomplish these objectives, in addition to permitting greater maturity date flexibility for both Guaranteed and Non-Guaranteed Debt as previously discussed, the FDIC should consider other methods to help ensure orderly execution, such as active management of the size and frequency of single issues by individual participants and measures to support secondary liquidity for all participating financial institutions regardless of size.

TRANSACTION ACCOUNT GUARANTEE PROGRAM

Under the terms of the Transaction Account Guarantee Program, a 10 basis point fee is assessed only on non-interest bearing transaction account (“**NIB Account**”) balances in excess of the \$250,000 general insurance limit. On its face, this seems like a very reasonable rule; however, it has pernicious implications that suggest that it will be virtually impossible for participating financial institutions to accurately calculate their insurance premium.

The Federal Register notice includes the following text:

Thus, for example, if a consumer has a \$250,000 certificate of deposit and a non-interest bearing checking account for \$50,000, he or she would be fully insured for \$300,000 (assuming the depositor has no other funds at the same institution). First, coverage of \$250,000 would be provided for the certificate of deposit under the FDIC’s general rules for deposit insurance coverage. . . . Separately, full coverage of the \$50,000 checking account would be provided under the Transaction Account Guarantee Program.

73 Fed. Reg. at 64183.

In 2005, the FDIC published an advance notice of proposed rulemaking (“**ANPR**”) that requested comment on three options for enhancing the speed at which depositors at larger, more complex insured institutions would receive access to their funds in the event of failure. 71 Fed. Reg. 74857 (Dec. 13, 2006). This ANPR required institutions to maintain a unique identifier for each depositor and for the insurance ownership category of each account. The FDIC received 18 (of 28) comment letters opposing the proposal, citing high costs and regulatory burdens. 73 Fed. Reg. 2364, 2370 (Jan. 14, 2008) (n.22 and related text). Response to a second ANPR issued December 13, 2006, produced similar comments about unnecessarily high costs and

burdens. 73 Fed. Reg. at 2370 (n.24 and related text). Recognizing the validity of these comments, the FDIC finally proposed a rule regarding Processing of Deposit Accounts in the Event of an Insured Depository Institution Failure and Large-Bank Deposit Insurance Determination Modernization (73 Fed. Reg. 2364, finally adopted later in 2008), which abandoned the requirements for unique depositor identifiers.

Unfortunately, by requiring that an institution participating in the Transaction Account Guarantee Program calculate its supplemental insurance premium due with respect to a NIB Account by first calculating all other insured balances that the depositor has in the institution, the FDIC has effectively brought back the most burdensome aspects of the ANPRs while giving institutions no time to modify their systems in order to comply. It is clear from the comment letters to the ANPRs that institutions do not have the ability to calculate the insured balances pertaining to each depositor who also maintains a NIB Account at the same institution.

Accordingly, Deutsche Bank believes that it would be more effective to simply charge a flat surcharge on all NIB Accounts (e.g., three basis points) regardless of amount. While the charge would not be directly related to the amount of NIB Account balances subject to the Transaction Account Guarantee Program, this proposal is similar to the general deposit insurance program in which institutions pay a flat rate regardless of whether they have many smaller accounts (which would be insured) or fewer larger accounts (that would be largely uninsured).

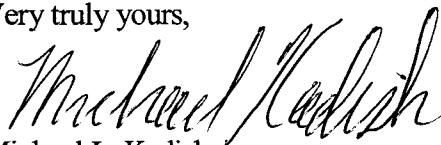
If the FDIC does not change the way that the Transaction Account Guarantee Program works – either by changing the way that the fee is charged or by insuring NIB Accounts without regard to other accounts maintained by the same depositor at the same institution – then the FDIC should explicitly state its policy for dealing with errors made by an institution in calculating the premiums due.

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November 13, 2008

Deutsche Bank appreciates the opportunity to comment on the TLGP. We would be pleased to provide additional information upon request. Should you have any questions about the matters discussed in this letter, please do not hesitate to contact Michael Kadish at (212) 250-5081 (e-mail: michael.kadish@db.com) or Patrick McEnerney at (212) 250-5668 (e-mail: patrick.mcenerney@db.com).

Very truly yours,



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