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Via Email to: Comments@FDIC.gov

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

November 13, 2008

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

Ladies and Gentlemen:

On behalf of M&T Bank Corporation ("M&T"), let me first express our strong support of the Federal Deposit Insurance Corporation's (the "FDIC") efforts through the Temporary Liquidity Guarantee Program ("TLGP") to mitigate the systemic risk in the credit markets and to enhance financial institutions' access to liquidity. M&T appreciates the opportunity to submit comments on the Interim Rule relating to the implementation of the TLGP, *73 Fed. Reg. 64179* (the "Interim Rule). We respectfully suggest that certain modifications should be made to the TLGP in order to make it more effective in meeting the goal to encourage liquidity in the banking system in order to ease lending to creditworthy businesses and consumers and to maximize participation by eligible financial institutions.

M&T is concerned with several elements of the Interim Rule, which we believe adversely impact the benefit of the TLGP to financial institutions and the broader market in general and preclude or significantly limit many eligible financial institutions from fully participating. In particular, we believe the FDIC should:

1. modify the definition of "senior unsecured debt" under the TLGP Debt Guarantee Program with respect to Eurodollar deposits to eliminate the requirement that such deposits be "standing to the credit of a bank";

2. consider other metrics for determining the maximum cap or limit for the Debt Guarantee Program in order to allow participating institutions to fully participate based upon their actual funding needs, regardless of their particular funding mix of unsecured or secured debt on one particular day;

3. modify the FDIC guarantee provided under the TLGP Debt Guarantee Program to cover principal and interest payment obligations on new eligible issuances of senior unsecured debt as they become due on an unconditional basis;

4. modify the option under the TLGP Debt Guarantee Program to provide more flexibility for participating institutions to opt in or out of the FDIC guarantee for certain eligible issuances of senior unsecured debt with maturities on or prior to June 30, 2012 on an on-going basis; and

5. consider covering all Federal Funds transactions under the Debt Guarantee Program at a reduced fee.

1. The Definition of "Senior Unsecured Debt" Under the TLGP Debt Guarantee Program Should Include All Eurodollar Deposits Held By a Participating Institution

M&T respectfully submits that the FDIC should modify the definition of "senior unsecured debt" under Section 370.2(e)(1) of the Interim Rule to eliminate the requirement that Eurodollar deposits held by participating institutions must be "standing to the credit of a bank." This reflects the fact that many institutions may use overnight Federal Funds purchased and Eurodollar deposits interchangeably to manage their marginal funding needs and that these institutions may borrow Eurodollar deposits from market participants (i.e., money market funds, corporate lenders, etc.) that do not meet the definition of "bank" in Section 370.2(e)(1).

Limiting the inclusion of Eurodollar deposits to those instances where such deposits are owed to a bank would serve to disenfranchise participating institutions that had Eurodollar deposits as of September 30, 2008 owing to entities like money market funds, corporate lenders or other non-bank market participants from fully participating in the Debt Guarantee Program. The current definition could result in artificially low amounts of "senior unsecured debt" being available for the FDIC guarantee for participating institutions due to their particular counterparts to Eurodollar deposit transactions. Such an approach would seem to be contrary to the intent of the TGLP to encourage liquidity in the banking system since money market funds and other non-bank entities are an integral part of this market.

Likewise, we suggest that consideration should be given to eliminating this same requirement for certificates of deposit and deposits in an international banking facility of an insured depository institution, which under Section 370.2(e)(1) and the FAQs issued by the FDIC must also be "standing to the credit of a bank." In addition, M&T would respectfully request that the FDIC consider including negotiable or institutional CDs within the definition of "senior unsecured debt" since these CDs also serve as a primary funding source for many financial institutions.

In connection with the foregoing, we also note that the current definition of "senior unsecured debt" does not require that banks be the counterparties to transactions involving promissory notes, commercial paper or unsubordinated unsecured notes, presumably in recognition of the

fact that there are other legitimate market participants that participating institutions rely upon for their funding needs.

Since many participating institutions use overnight Federal Funds purchased and Eurodollar deposits interchangeably on a daily basis to meet their overnight funding needs, there should be no distinction between them under the Debt Guarantee Program, nor should there be any distinction based upon who the counterparties are.

2. Consider Other Metrics For Determining the Maximum Cap or Limit for the Debt Guarantee Program In Order To Allow Participating Institutions To Fully Participate Based Upon Their Actual Funding Needs, Regardless of Their Particular Funding Mix of Unsecured or Secured Debt On One Particular Day

Financial institutions have not had access to the unsecured term debt markets for much of the past year, which has resulted in many institutions seeking other primary funding sources, such as secured borrowings from Federal Home Loan Banks ("FHLBs"), the Federal Reserve Term Auction Facility ("TAF") or from negotiable or institutional certificates of deposits ("CDs"). The magnitude of borrowings under the TAF, which was approximately $149 billion as of October 1, 2008, evidences the magnitude of this shift in borrowing sources. As a result, M&T respectfully submits that the borrowing levels of many participating institutions as of September 30, 2008, based upon the definition of "senior unsecured debt" under the Debt Guarantee Program, may be artificially low and not truly representative of their overall funding needs.

Since many financial institutions have higher levels of secured borrowings as of September 30, 2008 than they would otherwise have under normal market conditions, the FDIC's approach of limiting the Debt Guarantee Program to 125 percent of the amount of a participating institution's senior unsecured debt outstanding as of September 30, 2008 that was scheduled to mature on or before June 30, 2009 would seem to fall short of providing an accurate portrayal of the overall funding needs of a participating institution. In addition, such an approach would penalize institutions that have exercised prudent liquidity risk management in accessing the secured funding markets through the FHLBs, TAF or other sources as the unsecured term debt markets have seized up.

The FDIC has appropriately concluded that some participating institutions might not be able to fully participate in the Debt Guarantee Program due to their having little or no senior unsecured debt on September 30, 2008 and has established a process for such institutions to seek an exception to the 125 percent limit under Section 370.3(b) of the Interim Rule. This exception process does not address the situation for many other participating institutions whose debt levels as of September 30, 2008 are artificially low but not zero and do not reflect their overall funding needs.

Therefore, M&T would suggest that the FDIC consider expanding the availability of this exception process to allow participating institutions in the situation where their debt levels are artificially low to be afforded the ability to have exceptions granted to the 125 percent limit in order to allow them to fully benefit from the Debt Guarantee Program based upon their overall funding needs.

Another approach that the FDIC should consider would be to better define a participating institution's borrowing needs by looking at various other metrics, such as an average of the amount of senior unsecured debt outstanding over some period of time versus a single point in time, taking account of secured borrowings over some period of time, establishing a limit based upon an institution's total assets or total debt or by increasing the 125% limit. These metrics could be used to better define a participating institution's eligible debt under the Debt Guarantee Program and would not result in any disparate impact based among participating institutions based upon their particular funding mix as of September 30, 2008.

3. The FDIC's Guarantee Should Be a Full and Unconditional Guarantee of Payments of Principal and Interest in Accordance With the Original Provisions of the Guaranteed Debt

As currently proposed, we do not believe that the Debt Guarantee Program is sufficient to market guaranteed senior unsecured bank and bank holding company debt issuances to the typical investor base at the most favorable possible price. This results from the fact that the Interim Rule provides that the FDIC's guarantee will only apply to unpaid principal and interest "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." The investor base for these debt instruments are traditional "rates" investors who are accustomed to stronger contractual rights under government and agency bonds and traditional corporate bond guarantees. Therefore, M&T respectfully submits that the FDIC should consider modifying the Debt Guarantee Program to be a full and unconditional guarantee of payments of principal and interest when they become due, regardless of the basis for nonpayment, in order to ensure that there is sufficient demand for these instruments. The failure to do so may prevent these obligations from being rated AAA/A1/P1 by the various rating agencies and could have a negative impact on the perception of other U.S. government debt. Modifying the guarantee as proposed above would significantly reduce such risk.

On a related matter, M&T believes that the investor base for this type of guaranteed debt having a maturity of up to three years is not currently active in purchasing any term notes issued by a financial institution due to the de-leveraging process currently taking place in the market. Other traditional "rates" investors, such as pension funds, insurance companies and traditional money managers, are more active in purchasing this type of guaranteed debt but are looking for longer term assets to fund future liabilities. As a result, M&T would respectfully submit that the FDIC

should consider expanding the term of new senior unsecured debt eligible under the Debt Guarantee Program to a term longer than three years.

In addition, in order for investors to have a clear understanding of the guarantee structure under the Debt Guarantee Program, the form of the FDIC guarantee should be uniform and explicitly prescribed by the FDIC and made available on its website.

4. Participating Institutions Should Have the Flexibility to Issue Senior Unsecured Debt Not Guaranteed By the FDIC With a Stated Maturity Before June 30, 2012

Under Section 370.3(f) of the Interim Rule, the FDIC has proposed to allow participating institutions to elect to retain the option of issuing non-guaranteed, longer-term senior unsecured debt (i.e., having a maturity date after June 30, 2012) before issuing the maximum amount of guaranteed debt. This limitation is contrary to the guarantee provided under the United Kingdom's 2008 Credit Guarantee Scheme where institutions have the flexibility to issue both U.K. government guaranteed debt and non-government guaranteed debt, and would place U.S. banks at a competitive disadvantage when compared to their U.K. counterparts. M&T believes that providing participating institutions with the flexibility to issue both guaranteed and non-guaranteed senior unsecured debt regardless of the stated maturity will allow institutions to better manage their overall funding needs by utilizing the guarantee in those particular debt markets that the institution deems necessary or appropriate to meet its needs and to target those investors for whom the guarantee will provide the most benefit (i.e., long-term "rates" investors).

M&T therefore respectfully proposes that the FDIC consider providing U.S. banks with the same flexibility that their U.K. counterparts have under the United Kingdom's 2008 Credit Guarantee Scheme to opt in or out of guarantees on a per issuance basis regardless of the stated maturity date.

5. Consider Covering All Federal Funds Transactions Under the Debt Guarantee Program at a Reduced Fee

Since the current structure of the Debt Guarantee Program would likely result in a two-tiered Federal Funds market where certain Federal Funds transactions are guaranteed and others are not, M&T respectfully proposes that the FDIC consider providing a guaranty on all Federal Funds transactions (except those arising from sweeps and between affiliates) at a significantly reduced fee (e.g., 10 bps). This will have the effect of ensuring that the Federal Funds market functions smoothly and will eliminate the associated confusion of guaranteed versus non-guaranteed Federal Funds transactions. As discussed above, participating institutions should still have the right to select which other issuances of senior unsecured debt are covered under the Debt Guarantee Program. This would necessarily require that a participating institution's limit

under the Debt Guarantee Program not apply to Federal Funds transactions, which would allow them instead to access the term funding market, which has remained extremely constrained.

In the event that the FDIC does not determine to provide a guaranty for all Federal Funds transactions, M&T would seek clarification on how the FDIC would expect market participants to track whether or not a particular institution's transactions are guaranteed.

In addition, we would note that Federal Funds transactions, as well as other overnight borrowings such as Eurodollar deposits, are not evidenced by a written agreement and would therefore not meet the definition of "senior unsecured debt" under Section 370.2(e) of the Interim Rule. M&T would respectfully request that the FDIC make an exception in the final rule for such overnight borrowings, which are typically evidenced by verbal confirmations.

6. Other Suggestions with Respect to the Transaction Account Guarantee Program

M&T would also like to comment on several aspects of the Transaction Account Guarantee Program.

First, the FDIC specifically requested comment on whether the Transaction Account Guarantee Program should be extended to encompass not only non-interest bearing transaction accounts, but also "NOW accounts held by sole proprietorships, non-profits, religious, philanthropic, charitable organizations and the like, or governmental units for the deposit of public funds if the interest paid is de minimis."

M&T supports this proposal and, in fact, recommends coverage of all NOW accounts, regardless of the class of owner or the amount of interest paid. While the classes of account owners proposed to be covered would most likely encompass the majority of NOW account holders with funds in excess of $250,000, M&T does not believe that there is a compelling reason to distinguish between NOW account owners for this purpose. Accordingly, M&T respectfully recommends that the FDIC consider including all NOW accounts in the Transaction Account Guarantee Program, including individually owned accounts and IOLAs and IOLTAs. However, should the FDIC determine not to include one or more classes of NOW account owners under the program, M&T respectfully requests that such exclusion be narrowly drawn in order to provide coverage for the maximum number of NOW account owners.

M&T also respectfully recommends that the FDIC consider omitting the condition that a NOW account pay only "de minimis interest" in order to be eligible for the Transaction Account Guarantee Program. Given the current interest rate environment and the temporary nature of the program, M&T does not believe that this condition is necessary and believes that it may introduce potential ambiguity. However, if the FDIC does include such a standard, M&T respectfully requests that the FDIC consider defining the term "de minimis interest." M&T seeks clarification that the FDIC would determine whether interest is de minimis based upon the

rate of interest paid (rather than the dollar amount of interest paid) and respectfully requests that the FDIC specify a formula or measurement for determining whether a rate is "de minimis" for purposes of the Transaction Account Guarantee Program.

M&T also respectfully asks the FDIC to clarify how banks should calculate the premiums due with respect to accounts covered by the Transaction Account Guarantee Program. Section 370.7(c) of the Interim Rule states that the 10 bps fee is payable on "any deposit amounts exceeding the existing deposit insurance limit of $250,000....in any non-interest bearing transaction accounts...." M&T suggests that the FDIC clarify whether a bank should: (1) treat each non-interest bearing transaction account separately (i.e., look at each covered account separately and pay the additional premium only on balances in that account that exceed $250,000) or (2) aggregate all non-interest bearing transaction accounts belonging to a particular depositor (i.e., pay the additional premium on the amount by which the aggregate non-interest bearing transaction account balances of that depositor exceed $250,000).

In addition, M&T requests that the FDIC clarify Section 370.5(h)(3)(ii) of the Interim Rule, which provides that "[i]f the institution uses sweep arrangements or takes other actions that result in funds being transferred or reclassified to an interest-bearing account or nontransaction account, the institution must disclose those actions to the affected customers and clearly advise them, in writing, that such actions will void the FDIC's guarantee." Specifically, we respectfully request that the FDIC clarify and confirm: (1) whether this disclosure is required for any formalized sweep arrangement that a bank may have with a particular customer to sweep funds to another account at the bank (e.g., an interest bearing savings account or Eurodollar deposit) or at a separate institution (e.g., a mutual fund), (2) that the FDIC's statement that a sweep to an interest-bearing account or non- transaction account will "void the FDIC's guarantee" means that funds swept out of the account to an interest bearing account or non-transaction account are ineligible for the guarantee while such funds remain in the ineligible account (i.e., that this statement does not mean that the entire non-interest bearing transaction account loses the benefit of the insurance guarantee under the Transaction Account Guarantee Program simply because it is subject to such a sweep arrangement), and (3) that this disclosure is not required for the types of behind the scenes sweeps to non-interest bearing money market or savings accounts that banks utilize in managing reserve requirements (i.e., because these sweeps do not negate the eligibility of an account for the Transaction Account Guarantee Program despite the fact that funds are swept into a "non-transaction account").

In addition, we respectfully request that the FDIC extend the period for compliance with the signage and disclosure requirements relating to participation in the Transaction Account Guarantee Program until a reasonable time after the FDIC announces whether it will include NOW accounts under the program. This will enable banks to order, print and prepare to distribute accurate disclosures and will avoid the need to duplicate this process if the FDIC expands the scope of the rule to include some or all NOW accounts

As mentioned above with respect to the Debt Guarantee Program, M&T also believes that the FDIC should explicitly define and make available on its website the material substantive disclosures required under the Transaction Account Guarantee Program in order to avoid marketplace confusion and to minimize unnecessary cost and complexity.

Finally, M&T applauds the new General Counsel's Opinion Number 8 published today in the Federal Register, which takes the position that certain stored value cards are similar to checking accounts and will be considered "deposits" for purposes of FDIC insurance. M&T suggests that the FDIC provide further guidance on whether stored value cards are eligible for coverage under the Transaction Account Guarantee Program (i.e., because these cards typically permit ready access to funds and their balances earn no interest). If such cards are considered non-interest bearing transaction accounts, M&T requests that the FDIC provide guidance on how the program would apply to such cards (e.g., how would a bank determine the amount on which to pay the 10 bps premium if the bank holds the balances of such cards in a pooled account and relies upon a third party to maintain the records necessary to support pass-through insurance coverage).

M&T appreciates the opportunity to provide these comments and suggestions. M&T is one of the nation's 20 largest domestic bank holding companies, with assets of $65 billion. M&T's banking subsidiaries, M&T Bank and M&T Bank, National Association, operate more than 680 branch offices and 1,600 ATMs in New York, Pennsylvania, Maryland, Virginia, West Virginia, New Jersey, Delaware, and the District of Columbia.

Very truly yours,

D. Scott Warman
Senior Vice President & Treasurer