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November 13, 2008 Via electronic delivery

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429
Attention: Comments

Re: RIN 3064–AD37; Temporary Liquidity Guarantee Program; 12 CFR Part 370; 73 Federal Register 64179; October 29, 2008

Dear Mr. Feldman:

The American Bankers Association (ABA) appreciates the opportunity to comment on the Temporary Liquidity Guarantee Facility. The ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than $125 million in assets – represent over 95 percent of the industry's $13.3 trillion in assets and employ over 2.2 million men and women.

The ABA recognizes the importance of taking action to address the financial disruptions that have occurred in the last several months and appreciates the FDIC's involvement in the process. The actions taken represent a significant departure from the traditional role of the FDIC. The systemic risk exception has been used in a way that no one would have anticipated, and while it is available to deal with such extraordinary circumstances, we believe that the actions taken should not become a permanent facility. As the banking industry must bear the costs of these initiatives, it is important that the risk be closely monitored, the pricing be subject to change so that those that participate pay a fair price to cover costs (and not impose costs on those that choose not to participate), and the program be unwound in a way that is least likely to be disruptive or create additional problems or costs for the industry.

Moreover, because the program and its implementation have occurred so quickly, it is highly likely that there will be negative unintended consequences. It is very important, for example, that the changes adopted do not create competitive imbalances that would favor banks of different sizes or types, or that those that choose not to participate in the program are not disadvantaged or punished in any way for that decision. Because of these concerns, the FDIC should be flexible and make adjustments to improve the program and quickly correct any problems that arise. This would include both the flexibility to change the elements of the guarantee (including debt covered, pricing, and terms) and the ability of banks to participate or not in the program.

Flexibility is also important because of the interactions the FDIC's guarantee has with other elements of the larger government emergency program. For example, the Federal Reserve has several programs, such as its Commercial Paper Funding Facility, that must work in tandem with the FDIC's guarantee program. This is critical to avoid funding decisions based upon differences among the programs rather than upon business reasons. Market perception is critical here too, as care must be taken that debt guaranteed by the FDIC carries with it no special connotation versus debt sold to the Federal Reserve. In fact, many bankers have asked whether the senior unsecured debt guarantee – particularly as it relates to commercial paper issuance – is necessary in light of the Federal Reserve's program to buy such debt. Thus, the ability to change the terms and pricing will be very important so as not to create competition between federal programs.

Also of high importance for the FDIC and for the industry is an exit strategy for this program that unwinds it in a way that is not disruptive to markets and the banking industry – and banks' relationships with their customers. By careful and flexible planning, this program should be designed to end as markets normalize.

It should be recognized that the guaranteed debt program is a fundamental shift by the FDIC away from its traditional and charter role of protecting insured depositors. The ability of the FDIC to offer and price separately protection for non-interest bearing deposit liabilities is also a new and untested concept. Depositor protection, however, is still within the scope of its traditional role. Further changes to make the guaranteed debt protect the payment stream rather than losses after the bank fails moves the FDIC protection even further away from protecting deposits and standing in their place as a general creditor in the receivership. The urgency of providing these guarantees has left a full discussion of the protection, including its desirability, pricing, and potential consequences. The 15-day comment period, particularly with many program details unclear or unavailable, necessarily limits the ability of the industry to provide comments on such a fundamental change in the FDIC's mission. Therefore, maintaining a flexible system, responsive to market realities and U.S. bank and holding company experiences and comments is the most important change that the FDIC can make in the final rule. Most importantly, once this limited protection expires, there should be a critical review of the authority of the FDIC to offer such protection, the scope of the coverage, and circumstances that would have to exist before invoking this in the future.

The ABA appreciates the exigencies leading to the announcement and rapid implementation of this program. Nevertheless, the sweeping scope and major size of the program would normally require more time for proper evaluation and consideration. Therefore, the concerns raised by the ABA in this letter should not be considered complete and definitive. Undoubtedly, further important issues and concerns will arise from additional consideration and analysis. We will certainly share such later observations with the FDIC.

Some of our key conclusions at this point are that:

- Overnight Federal Funds (and other overnight sweeps and transactions) should be *excluded* from the guarantee program altogether;
- The 75 basis point fee for guaranteed debt is too high, even for longer-term unsecured debt (and certainly for overnight funds);
- Institutions should be allowed to issue either guaranteed debt or non-guaranteed debt as they consider appropriate (with full disclosure for either decision);
- The calculation that limits debt issued under the guarantee program should be better designed to allow reasonable participation by all banks, including those that did not have unsecured senior debt on September 30, 2008;
- The guarantee must not create global competitive disparities;
- Definitional issues need to be addressed;
- More flexibility should exist to allow banks to participate;
- Clarity should be provided on the ability of participating institutions to repurchase outstanding senior unsecured debt;
- Institutions that choose not to participate should not be discriminated against by statute, regulation or supervisory activity;
- There needs to be flexibility for inadvertent mistakes made in good faith;
- Banks should not be required to aggregate accounts to determine the assessment for non-interest bearing transaction accounts;
- It is appropriate to include reserve sweeps as non-interest bearing transaction deposits;
- Model disclosures should be provided; and
- The "commercially reasonable" standard should be employed for disclosures.

The remainder of this letter provides detailed comments and recommendations on various aspects of the FDIC's Temporary Liquidity Guarantee Facility.

**Overnight Federal Funds (and other overnight sweeps and transactions) should be *excluded* from the guarantee program altogether.**

While there were concerns over interbank lending in the last several months, the liquidity programs by the Federal Reserve have helped considerably to assure adequate liquidity is available. In fact, for most banks, the ***overnight*** market for funding has not experienced significant problems. Thus, while some guarantees may be appropriate for longer-term unsecured debt, including overnight funds in the FDIC guarantee program would be highly disruptive to this market; would interfere with the conduct of monetary policy; and would be difficult for most institutions to track and for investors to know which debt is guaranteed and which is not. Such overnight funding should be excluded from the FDIC program. Rather than have the FDIC guarantee, the Federal Reserve should monitor flows in the overnight market and provide the necessary liquidity – as it has done throughout this difficult period – to satisfy the needs of financial institutions.

The overnight exclusion should include all forms of overnight money, including end-of-day sweeps that are provided to benefit customers. Sweeps present a particular problem: first, the bank cannot control the levels and it would be difficult to monitor and assure that there is adherence to the caps. Second, as the rate of return provided would be dramatically different with the guarantee program (and given that some sweeps would flow to institutions that choose to opt out of the program), it would be extremely difficult to adequately inform the customers of these accounts what rate is being provided. In fact, notifying customers of the changes would be a daunting exercise and would be operationally near impossible in a short period of time. Moreover, such notifications of change are likely to raise customers' anxieties (where none existed before) and create massive dislocations of funds as customers rethink where their money is kept for safekeeping and the return and protection provided. Third, the guarantee may shift the sweeps from unsecured to secured instruments (or other non-guaranteed instruments), which would be an unnecessary shift created only because of this short-term program. While some banks may be able to make such a transition easily from one type of sweep to another, many banks do not have secured lending programs. Thus, those banks may lose deposits, not because there is any change in creditworthiness of the institution or its ability to provide valuable and safe overnight investments, but solely because of this new guarantee program. Creating further disruptions in a market that has largely stabilized is certainly not the goal of this program.

Without this exclusion, monetary policy will be less transparent and more difficult to manage. The Federal Reserve sets the target rate of interest for overnight money. Currently, the federal funds target is at one percent (100 basis points). The guarantee on this type of debt (particularly at a 75 basis point fee) would dramatically affect the market price of this money as federal funds purchasers would factor the cost of the guarantee in what they would be willing to pay. Additionally, many banks will chose to fund themselves through less expensive secured borrowing sources such as at the Federal Reserve's Discount Window or Term Auction Facility, or through the Federal Home Loan Banks, any of which will further result in the reduction of interbank lending. Any guarantee would be disruptive to this market, but the 75 basis points annual charge is completely out of line with the current market pricing.

The pricing becomes even more complicated for bankers' banks and others that are both purchasers and sellers of federal funds. If these financial institutions must themselves have a guarantee for what they buy and the purchaser from them must have a guarantee for their purchase, the pricing distortion is compounded. With these distortions, what would be the appropriate Federal Funds rate to have the same impact as the one percent rate? How will the Federal Reserve know that it has reached the appropriate target rate? Moreover, it is likely that both a guaranteed and non-guaranteed market will develop, further compounding the pricing problems and conduct of monetary policy. The whole concept of the federal funds target rate as a monetary policy tool relies upon its full interaction on financial markets, not muted by government guarantees to influence voluntary market behavior.

Moreover, since the Federal Reserve has set interest rates on required and excess reserves near the current federal funds target rate, sellers of overnight funds are just as likely to keep funds in their reserve accounts at Federal Reserve Banks rather than lend them to other institutions. This would reduce the bank-to-bank liquidity.

The disclosure requirements for what is guaranteed and what is not is very problematic for overnight monies. These often do not have formal written agreements typical of longer-term debt instruments. Thus, disclosures become particularly troublesome and would require a costly new approach.

**The 75 basis points fee for guaranteed debt is too high, even for longer-term unsecured debt (and certainly for overnight funds).**

Pricing of the guarantees – particularly for senior unsecured debt – should be adjusted so that those that participate pay a fair price for the protection and cover the costs of the program. The FDIC should adjust guarantee fees if, over time, it becomes apparent that existing levels would lead to inequities. This would protect banks that choose not to participate from having to subsidize those that do participate if costs exceed revenues and would help assure fair pricing of the guarantees provided.

As noted above, the 75 basis points annual assessment is too high for overnight borrowings. Many bankers have raised the concern that it is also too high for most forms of senior unsecured debt. Moreover, at such a high cost, it is likely that banks would turn to secured borrowing in order to reduce their funding cost. The point of the program should be to support restoration of normal markets, not to drive banks into alternative funding structures. It may also be appropriate to have differential pricing of term debt guarantees depending on the instrument and its maturity. To the extent possible, there should be reliance upon market mechanisms to drive the pricing and not upon arbitrary fees that are set and do not respond to the changing domestic and global economies.

**Institutions should be allowed to issue either guaranteed debt or non-guaranteed debt as they consider appropriate (with full disclosure for either decision).**

Institutions should be able to issue either guaranteed debt or non-guaranteed debt. First, not all institutions will decide to remain in the program and, therefore, it is likely that two separate markets will develop. Broad participation in the guarantee program would not entirely eliminate pricing disparities as investors might still shy away, or demand a higher rate of return, from institutions that are perceived as presenting higher levels of risk. Other debt issued by those institutions, such as debt already in existence or issued by a subsidiary that is ineligible to participate in the FDIC program, would be in the marketplace. Thus, allowing the option to choose whether to issue under the guarantee or not would only enable institutions to better manage the cost of raising funds. We would note that the National Credit Union Administration has ruled that corporate credit unions have the right under its guarantee program to choose whether to issue guaranteed debt or non-guaranteed debt.

Second, institutions may issue non-guaranteed debt once they exceed the cap for guaranteed debt and may issue longer-term debt beyond the guaranteed period ending June 30, 2012. We believe that participation in the program should include the option for issuing non-guaranteed debt before the 2012 date and before the cap is reached – without having to pay an extra fee. Moreover, this would help to mitigate the risk of disruptions that may occur with the expiration of the program such as from significant concentrations of guaranteed debt maturing around the June 2012 date.

Third, other foreign banks, notably in the United Kingdom, have the option to issue either guaranteed or non-guaranteed debt. Allowing both non-guaranteed and guaranteed debt issuance would also allow U.S. banks to compete with U.K. banks that have been given this optionality.

Fourth, some investors would prefer higher yielding debt without a guarantee, as they would rather make the credit evaluation on their own and be rewarded (or punished) for their decision. Thus, a market for both guaranteed and non-guaranteed debt will emerge regardless of the requirements under the Interim Rule.

Allowing the option has other important benefits: it would act as a mechanism both to check the pricing of the guarantee as well as to provide for an exit strategy as the financial crisis abates and the value of the guarantee disappears. Because the 75 basis points pricing is not set in the market, it is likely to be too high or too low. By having the choice of issuing either guaranteed or non-guaranteed debt, the issuing institution will be able to make reasonable economic decisions about the overall cost of funding. Even though the window to issue guaranteed debt is short (through June 30, 2009), it would be expected that the guarantee would become less and less valuable (at the same fixed price) and therefore, more non-guaranteed debt would be issued. This change, however, would allow a natural transition away from the program.

**The calculation that limits debt issued under the guarantee program should be better designed to enhance participation by banks, including those that did not have unsecured senior debt on September 30, 2008.**

It is appropriate that the FDIC limit the debt that can be guaranteed under this program. The Interim Rule allows for 125 percent of the senior unsecured debt as of September 30, 2008 that is set to mature before June 30, 2009 to be guaranteed under the program. Some 7000 banks did not have debt on their books at that time, and many of those might want to use the guarantee facility. The administrative burden to consider individual requests for many of these banks in a timely fashion would be enormous and could disadvantage those banks that have not received their individual authority versus those that had. Thus, it would be reasonable to employ a standard that could apply to all such interested banks. Possible standards might be a percentage of total liabilities, total assets, Tier 1 capital, or some other reasonable base, that would be used to establish coverage limits.

Secondly, the September 30, 2008 date is arbitrary and may not fully reflect the typical usage of senior unsecured debt. This is clearly illustrated by banks that had no balances on that date but that had issued such debt in the past (particularly those that had purchased federal funds). For those that had debt on the September 30, 2008 date, it may well be that that balance was not reflective of the debt customarily issued by the bank. Moreover, the balances may have declined unnaturally for some banks as the ability to roll over debt was problematic even before the September 30, 2008 date.

Thus, changes are needed that would provide a more logical base for establishing levels of eligible debt. Several approaches might be considered to address this, including the change suggested above that would allow for some level of debt issuance relative to liabilities, assets, or capital. Nevertheless, such a measurement might constrain institutions that typically have even higher levels of debt, in keeping with their business and funding strategy. To be appropriately flexible, we recommend that a bank be able to choose any date since January 1, 2008 as the base threshold to which the 125 percent limitation would apply. This would allow the institution to choose a reasonable level based upon a date more reflective of the typical issuance of the debt undertaken, yet it would still provide FDIC with a limit on the guaranteed program. It is still important to keep the 125 percent multiplier, as this will add flexibility for guaranteed funding in the current environment. Taken together, these recommendations could take the form of the ***larger*** of a percentage of liabilities (or capital) ***or*** 125 percent of a debt level on a specific date chosen by the bank. The banks would be required to report the balance and date suggested, which only adds the date item as an additional reporting field to what is already under consideration in the Interim Rule for September 30, 2008.

The current limitation on issuance also presents some operational problems, particularly in institutions that have multiple banks that may be issuing senior debt separately. To address this, ABA believes that a threshold for the entire organization be established (which would aggregate the caps of all eligible entities within the organization) so that the institution could more easily decide how best to issue the debt without worrying about which part of the organization is issuing it. While this would require monitoring by the organization to assure it did not exceed the organization's cap, it would be preferable to managing debt levels at each eligible entity.

The rule must also address how the limitations on debt issuance will work when a merger takes place. For example, if a bank that has opted out of the program acquires a bank participating in the program, what level would apply? Would the entire institution be subject to the guarantee program? What happens to the outstanding debt? Would the institution be able to change its limitations based on the patterns and levels of the acquired institution?

**The guarantee must not create global competitive disparities.**

The guarantee provided by the FDIC on senior unsecured debt is different from guarantees provided by other countries. Such an inconsistency could create competitive problems and may incorrectly lead investors to believe that one issuer is less creditworthy than another. Flexibility to adjust the guarantee program so that there is no material international competitive inequity is important. It would be valuable to reinforce the fact that the FDIC is backed by the full faith and credit of the federal government. Such a statement, together with changes suggested below that would make the debt comparable with other debt guarantees, would preserve the highest credit rating possible for these types of securities.
Such treatment will also enable the risk-weighting for capital purposes to be equivalent to other securities with such protection. Our members are very concerned that the even with a risk-weighting of 20 percent for guaranteed debt under the FDIC program – compared to a zero percent risk weighting for guaranteed debt from obligations placed in Europe – will reduce the attractiveness of debt issued by U.S. institutions and will materially alter the targeted investor base.

Many banks have noted that the guarantee provided under the FDIC Interim Rule is protection only in the event the issuing institution fails. This approach is similar to the typical protection provided to insured depositors. However, this approach differs from other types of debt guarantees which provide the lender with assurance that the payment stream will be guaranteed if the issuer ***fails to perform*** under the contract. Investor demand and pricing is very likely to differ on these two types of guarantees and could create problems in the global market for debt. In fact, most large banks that issue this type of debt believe that without an equivalent guarantee that provides for the timely payment of interest and principal the demand for these securities would be severely reduced and would, as a consequence, limit their access to funding.

**Definitional issues need to be addressed.**

There are many ambiguities and inconsistencies in the Interim Rule. One particular ambiguity is what constitutes "senior unsecured debt." Having a clear definition is obviously critical to determining and reporting the maximum guaranteed cap on issuance. Having a detailed list of various types of debt that would be covered and some definition that would enable institutions to determine in a reasonable manner whether the liability fits within the definition. For example, some institutions have raised the question about whether the following types of 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).

Moreover, greater clarity is needed to assure that foreign denominated issuances that are settled in U.S. dollars are ***included.*** In addition, clarity is needed to assure that certain deposits standing to the credit of a bank are ***excluded*** when the depositor bank is acting in a custodial or representative capacity for funds belonging to others; and that "bank" in this case excludes central banks and similar non-U.S. government entities that provide central bank services.

**More flexibility should exist to allow banks to participate.**

The Interim Rule states that once a decision is made, either to opt out or stay in the program, the decision is irrevocable. Without knowing how the market will view either a decision to opt out or to stay in, and because the competitive consequences cannot be known until there is some experience with the program, there needs to be flexibility for a bank to reverse its decision. While there should be restrictions preventing an institution from jumping in and out of the program with frequency, some additional flexibility is certainly needed. The ability to opt out at any time in the program may, in fact, offer a way to slowly reduce the size of the program as the value (and need) for the guarantee diminishes.

For the guaranteed debt program, the flexibility to issue either non-guaranteed or guaranteed debt would provide this flexibility without any additional changes (although there would be no need for any institution to formally opt out of the program, which would reduce the administrative burden as well as any notoriety about what decision a bank made).

For the transaction account guarantee, it may well be that a bank may choose to opt out of the program given its customer deposit profile, yet want to reverse that decision as the bank acquires new business accounts or high-dollar accounts of individuals. It would be unreasonable to preclude banks from changing their election. In this case, we would suggest that a bank might be required to make a decision before the start of each covered quarter.

**Clarity should be provided on the ability of participating institutions to repurchase outstanding senior unsecured debt.**

The FDIC has stated that the proceeds of guaranteed debt issuances cannot be used to prepay non-guaranteed debt. We request that the FDIC provide additional guidance on the ability of institutions that remain in the FDIC guaranty program to repurchase unsecured debt securities with proceeds from non-guaranteed sources of funds (deposits, Federal Home Loan Bank advances etc.). Such repurchases will allow institutions to make economically attractive liability management decisions and more prudently manage their maturity profiles. Funds used to repurchase securities will also provide much needed liquidity to investors in the capital markets.

Finally, we request that the FDIC provide guidance as to whether or not repurchases at entities with no capacity under the guaranty program will eliminate the ability of an institution that remains in the program to issue FDIC-guaranteed debt at another entity.

**Institutions that choose not to participate should not be discriminated against by statute, regulation, or supervisory activity.**

There is great concern that banks that choose not to participate will be subject to negative publicity about their choice, particularly if the FDIC lists the institutions by name on its website. This appears to be a heavy handed attempt to force participation upon the industry (particularly when tied to the irrevocability of the decision to participate or not). A mere listing of banks does not provide any detail as to the many legitimate reasons for the choice – either to opt out or stay in – and without this context, observers may incorrectly conclude that the bank is experiencing problems, when, in fact, the opposite may be true. Moreover, with either the debt guarantee or the transaction deposit protection, disclosures are required. Not only should banks disclose the choices made, but there should be no limitation on how the banks explain the decision that is made.

**There needs to be flexibility for inadvertent mistakes that were made in good faith.**

The Interim Rule exposes participating institutions to penalties and potential liabilities under securities, Unfair and Deceptive Acts and Practices (UDAP), and other laws for mere oversights or inadvertent miscalculation or errors. This is particularly troubling given the complexity, timing issues, and ambiguities of the program. There should be flexibility and authority to consider the problem in context and not penalize institutions inappropriately. The rule needs a good faith provision that will preempt causes of action for purported violations of other laws, such as securities, UDAP, and similar laws. To encourage eligible entities to participate and to protect participating entities from serious claims based on technical noncompliance with the rule, participating entities should not be liable under any state or federal law for failing to comply with this rule when the failure was not intentional and resulted from a *bona fide* error or oversight, notwithstanding the maintenance of reasonable procedures to comply with the rule. This flexibility is particularly advisable given the haste with which the program was promulgated.

**Banks should not be required to aggregate accounts to determine the assessment for non-interest bearing transaction accounts.**

We understand that the FDIC will not require aggregation of accounts in order to determine the assessment on non-interest bearing transaction accounts. We believe that this is an appropriate decision given the limited timeframe that the guarantee will be in place. While aggregation of accounts is simple in theory, the reality is far from it. Conducting such aggregations is by no means easy or straightforward, and it would be impossible given the assessments would begin in the fourth quarter of 2008. Many large institutions have begun the difficult process of changing their systems in order to provide more specific detail on deposit insurance coverage as required under the Large Bank Deposit Insurance Determination Modernization rule.[1] However, those changes are considerable and are many months away from being operational. Thus, not requiring aggregation and assessing fees only on individual transaction accounts in excess of $250,000 is appropriate. Assessing according to individual account levels would also encourage institutions to participate; aggregation of accounts would be a severe deterrent.

It should be recognized that even an account-by-account reporting methodology, while manageable, involves costs and banking resources. More importantly, banks are concerned about the compliance and regulatory/legal risk of defending what has been reported. Thus, an even simpler and straightforward approach would be preferred to even the account-by-account methodology: assessing on all non-interest bearing accounts.

**It is appropriate to include reserve sweeps as non-interest bearing transaction accounts.**

We applaud the FDIC for recognizing that many non-interest bearing transaction accounts are linked to non-interest bearing savings accounts as part of a bank's deposit reclassification program. Sweeps from one account to the other allows the institutions to manage the cost of reserve requirements at the Federal Reserve. These accounts are typically placed under a master account for the customer, and while there is full disclosure to the customer about these subaccounts, the process has no effect on customers or the liquidity of their transaction accounts. If, however, there were differences in the insurance coverage among the subaccounts because deposit reclassification programs were not included in the program, it is very likely that such reclassification programs would need to be stopped. Therefore, including the non-interest bearing savings accounts that are linked to transaction accounts is a very appropriate decision.

However, there appears to be an inconsistency in the exclusion as some banks link to non-interest bearing ***time deposits***. As these may not be covered in the definition of savings accounts (although they are non-interest bearing), they may not be covered in the FDIC's program. In order to ensure full coverage of customers' transaction accounts, this uncertainty in coverage will likely require banks to suspend these programs. This would be a very costly change triggered by the FDIC's mandate and represents a disruption without any real purpose. It is critical, therefore, that other similar deposit reclassification programs be included and clarity be provided as soon as possible.

Given the broad variation in banks' practices in this area, we suggest the FDIC modify the exclusion for sweeps to savings accounts proposed in the Interim Rule and insure and assess premiums against all non-interest bearing account balances above $250,000. Not only would this cover different types of deposit reclassification programs, but it is highly likely that all such non-interest bearing account balances are very short-term money that is available for transactions.

[1] 73 Federal Register 41180, July 17, 2008

**Model disclosures should be provided.**

Many banks are currently struggling to find appropriate language for disclosures about the temporary protection on non-interest bearing transaction accounts. Therefore, in order to avoid confusion and provide consistency it would be very helpful for FDIC to provide model language for disclosure, including those required in the lobby and branches and those required for the senior unsecured debt guarantee.

**The "commercially reasonable" standard should be employed for disclosures.**

This is particularly important in the case of the guaranteed debt. Currently, the rule requires that lenders or creditors be notified in writing ***and*** in a commercially reasonable manner. The written statement requirement should be eliminated (and the commercially reasonable manner preserved) as many types of senior unsecured debt do not have written documentation that can accommodate the "Guaranteed by the FDIC" statement. Providing disclosures through confirmation or other accompanying documentation would not only be technically difficult to accomplish, but more importantly would not be an effective means of conveying this information to investors.

The ABA appreciates the opportunity to comment on this important rule. We stand ready to work with the FDIC to improve the rule. Should you have questions regarding our recommendations or need further detail on them, please contact me at 202-663-5130 or Robert Strand at 202-663-5350.

Sincerely,

James Chessen