November 13, 2008

Via Email: Comments@FDIC.gov

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, DC 20429

Re: Interim Rule - Temporary Liquidity Guaranty Program

Ladies and Gentlemen:

This letter is submitted on behalf of the Structured Products Association in response to the request of the Federal Deposit Insurance Corporation (the "FDIC") for comments on the FDIC's Interim Rule (the "Interim Rule") regarding the Temporary Liquidity Guarantee Program (the "TLGP"). The Structured Products Association (the "SPA" or the "Association") recommends that, in its final rule, the FDIC include principal protected senior, unsecured debt securities as "senior unsecured debt" eligible for the Debt Guarantee Program.

The comments presented in this letter represent the views of the Structured Products Association, which is a New York-based trade group. The Association is committed to promoting the development and growth of the structured products market in the United States, and to ensuring that investors in structured products understand the terms and risks of their investments. The Association was the first trade organization for structured products in the United States and now has more than 4,200 members, including members from securities exchanges, self-regulatory organizations, law firms, compliance professionals, investor networks, family offices, and buy-side and sell-side structured products firms.

<u>Structured Products</u>

There is no uniform or consistently embraced definition of "structured products." The Association and its members generally regard a "structured product" as a security or other instrument (*e.g.*, a bank deposit, commercial paper, senior or subordinated debt security or note, warrant, etc.), the return on which is based on the performance of one or more reference assets,

which may include stocks, indices, funds, commodities, exchange rates, etc.[1] A structured product may be custom-tailored to offer investors exposure to particular risk/return profiles that are otherwise unavailable or that would be difficult for an investor to access. Structured products may be issued as registered securities, or may be offered pursuant to an exemption from the registration requirements of Section 5 of the Securities Act of 1933, as amended.

The structured products market in the United States has been growing quickly. The market for structured products in the United States is $120 billion in new issuances per annum. On a percentage basis, structured products is the fastest growing investment class in the United States. The number of issuers of structured products continues to increase.

Senior Unsecured Debt Under the TLGP

The SPA believes that senior unsecured debt that are structured products but that also are the economic equivalent of existing types of insured deposits should be included within the scope of the definition of senior unsecured debt in section 370.2(e) of any final rule. Language that would accomplish this result is attached to this letter as Exhibit A.

Since the late 1980s, the FDIC has permitted the extension of deposit insurance to indexed certificates of deposit ("indexed CDs"). Indexed CDs are bank deposits, the interest payments on which are linked to a reference asset. The holder of an indexed CD receives, at maturity, an amount equal to the principal amount of the holder's initial investment plus an amount based on the performance of the referenced index as interest. An indexed CD is the bank deposit equivalent of a type of structured product known as a principal protected structured note.

We understand that in considering whether a bank product, such as an indexed CD, is a "deposit" eligible for FDIC insurance, the FDIC evaluates, among other things, the purchaser's possible loss of principal. If the product is structured so that principal is at risk, such that that the purchaser might not ultimately receive a return at least equal to the full principal amount, the FDIC has concluded the product is not a deposit obligation of the bank and, thus, not eligible for FDIC insurance.[2] Using this rationale, the FDIC has concluded that indexed CDs that require the

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[1]Examples of "structured products" include those described in the following filings with the Securities and Exchange Commission:

- Deutsche Bank – notes linked to a basket of equity securities: http://www.sec.gov/Archives/edgar/data/1159508/000119312508127284/dfwp.htm;
- Goldman equity index linked notes: http://www.sec.gov/Archives/edgar/data/886982/000119312508148776/d424b2.htm;
- JP Morgan commodity index linked notes: http://www.sec.gov/Archives/edgar/data/19617/000089109208003587/e32299_424b2.htm; and
- Morgan Stanley LIBOR Range Accrual notes: http://www.sec.gov/Archives/edgar/data/895421/000095010308002772/dp11816_424b2-ps810a2.htm

[2] Letter from FDIC to Kevin P. Murray, dated February 27, 2002.

return of the depositor's principal are "principal protected" bank deposits that qualify for deposit insurance.[3]

Similarly, a principal protected structured note provides that the holder receives, at maturity, 100% of its invested capital. In other words, at maturity, payout on the principal protected notes is equal to the original principal amount plus a coupon or supplemental amount based on the performance of a reference asset. The performance of the reference asset does not reduce the principal amount. Principal protected notes provide a number of important benefits to investors, including high growth potential; enhanced income potential; liquidity; the opportunity to invest in a broad range of investments; and the potential for leveraged returns.

The Association understands that the purpose of the FDIC Debt Guarantee Program is to provide liquidity and promote stability in the funding markets. Principal protected notes are issued by financial institutions as a routine component of their diversified funding and liquidity strategies. Financial holding companies are some of the most prolific issuers of structured products, and, for some, the issuance of principal protected structured notes represents an important component of their funding operations. Issuers often are able to obtain medium term financing at advantageous funding rates through the issuance of structured products. Confirming the status of principal protected notes under the Debt Guarantee Program would preserve this low-cost funding source at a time when the lack of interbank liquidity and access to credit markets make such sources all the more important.

The Association also appreciates that the purpose of the Debt Guarantee Program is not to encourage inappropriate risk taking. By contrast, principal protected structured notes, which have been part of the structured products market since its inception, do not present inappropriate risks. The principal component of such notes is not linked to a reference asset; these products do not tend to exhibit the complexity of other non-principal protected products. In fact, it is this very principal protection feature that has led to strong investor interest in this product type, which has continued even under current market conditions. Excluding principal protected structured notes from the Debt Guarantee Program will striate the debt markets in a way that may have unintended consequences that will make it more difficult for banking institutions to adjust to unguaranteed market funding at the expiration of the Debt Guarantee Program.

If the FDIC were to exclude principal protected structured notes from the Debt Guarantee Program, the same financial institution families that currently offer principal protected structured notes would be motivated to issue indexed CDs instead. Investors, comparing two virtually identical products (a principal protected structured note versus an indexed CD), would flock to purchase the indexed CD. As it is, following the bankruptcy of Lehman Brothers Holdings Inc., many investors already are seeking indexed CDs. However, from a public policy perspective, it makes little sense to favor one form of principal protected product over another, particularly in these times when liquidity is scarce. Needless to say, the insurance fund of the FDIC would

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[3] FDIC Advisory Opinion, FDIC-87-15, September 18, 1987, Insurance Coverage for Indexed CDs.

back (up to the insured limit) the payments on indexed CDs. This would seem a counterintuitive result.

We appreciate the opportunity to comment on the Interim Rule.

Very truly yours,

/s/ Keith A. Styrcula
Chairman and Founder
Structured Products Association

Exhibit A

370.2 **Definitions**

Senior unsecured debt. The term ‘‘senior unsecured debt’’ means unsecured borrowing that: Is evidenced by a written agreement; has a specified and fixed principal amount to be paid in full on demand or on a date certain; is noncontingent; and is not, by its terms, subordinated to any other liability.

(1) Senior unsecured debt includes, for example, federal funds purchased, promissory notes, commercial paper, unsubordinated unsecured notes, **structured notes the principal or face amount of which is not subject to reduction based on the performance of any reference asset or embedded derivative,** certificates of deposit standing to the credit of a bank, bank deposits in an international banking facility (IBF) of an insured depository institution, and Eurodollar deposits standing to the credit of a bank. For purposes of this paragraph, the term ‘‘bank’’ means an insured depository institution or a depository institution regulated by a foreign bank supervisory agency.

(2) Senior unsecured debt may be denominated in foreign currency.

(3) Senior unsecured debt excludes, for example, obligations from guarantees or other contingent liabilities, Derivatives and derivative-linked products **(including structured notes if the principal or face amount thereof is subject to reduction based on the performance of any reference asset or embedded derivative)**, debt paired with any other security, convertible debt, capital notes, the unsecured portion of otherwise secured debt, negotiable certificates of deposit, and deposits in foreign currency and Eurodollar deposits that represent funds swept from individual, partnership or corporate accounts held at insured depository institutions. Also excluded are loans to affiliates, including parents and subsidiaries, and institution affiliated parties.