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

November 4, 2008

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

Ladies and Gentlemen:

On behalf of Credit Suisse, we would like to recognize the importance of the recent Interim Rule (73 *Fed. Reg.* 64, 179 (Oct. 29, 2008), the "Interim Rule") regarding the Temporary Liquidity Guarantee Program ("TLGP") and thank the FDIC Board Members and Staff for their dedicated work. The positive market effects have been tangible, and we are optimistic that, with appropriate modifications, the program will be successful in helping to mitigate systemic fear in the interbank and capital markets.

Nonetheless, we are concerned with at least two elements of the Interim Rule, which, by severely diluting the benefit of the FDIC guarantee, may preclude many eligible institutions from capital markets access. Specifically, the elements of our concern are:

(1) the failure of the FDIC guarantee under the TLGP's Debt Guarantee Program to guarantee principal and interest payments on guaranteed debt as they become due and payable, and

(2) the absence of a requirement for uniform disclosure of the terms of the guarantee to investors.

We believe that if the TLGP is amended to address these concerns, the ability of the Debt Guarantee Program to provide capital markets access for the full array of eligible institutions will be significantly enhanced.

In this regard, and as more fully set forth below, we recommend that:

(1) the FDIC's guarantee be modified to fully and irrevocably guarantee interest and principal in accordance with the original provisions of the guaranteed debt, and

(2) the FDIC promulgate uniform disclosure language relating to the guarantee for use in prospectuses and other disclosure documents.

Both of these solutions have been adopted with great success by Her Majesty's Treasury in the United Kingdom.

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 it currently stands, the debt guarantee contemplated by the FDIC is not sufficient to market guaranteed senior bank and bank holding company note issuances to the largest potential investor base at the most favorable possible price. The ideal investors for this product, *i.e.* those representing the greatest demand at the lowest yield to the issuer, primarily hold government and agency bonds and are colloquially known as "rates" investors. They are nearly completely credit risk averse and make investments according to factors such as interest rates, duration, and the shape of the yield curve. As such, they demand that the payment schedule of principal and interest is exactly known at the time of sale, *i.e.* not subject to any credit deterioration, default, delay in payment, or deviation from the contractual rate. In its current form, the FDIC's guarantee under the TLGP fails to meaningfully address this investor demand.[1]

The Interim Rule establishing the TLGP states clearly that the FDIC's guarantee of unpaid principal and interest will become effective only "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." While subject to the FDIC's customary assurance of expeditious claims processing, any claims on guaranteed debt are subject to delay beyond the next business day following the date of receivership or bankruptcy. In these cases, interest will be paid at the 90-day T-Bill rate until resolution of the claim. The claims process in the case of receivership allows for up to a combined 270 days of processing – 90 days for the investor to file its claim and, subsequently, 180 days for the FDIC to make a determination on the claim. The claims process in the case of bankruptcy is indeterminately longer as it is subject to the bar date of the bankruptcy proceeding and, subsequently, the date at which all claims against the bankruptcy are not subject to reconsideration; both of these dates are legally outside of the FDIC's control. Despite the FDIC's history of prompt payment on deposit insurance claims, bond investors are accustomed to stronger contractual rights under traditional corporate bond guarantees.

It is our understanding that the TLGP guarantee may have been intentionally modeled upon FDIC deposit insurance. While FDIC deposit insurance has served holders of deposit obligations well, its provisions are not appropriate in the context of a debt guarantee scheme. Bondholders are fundamentally different than depositors, both contractually and in terms of investment profile. Specifically, we wish to highlight the following:

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[1] In announcing the TLGP, FDIC Chairman Bair addressed another element which we believe is critical to the success of the TLGP by indicating that the TLGP is "backed by the full faith and credit of the U.S. government." *See* Chairman's Statement on the Temporary Liquidity Guaranteed Program, *available at* http://www.fdic.gov/regulations/resources/TLGP/chairman_statement.html. However, the Interim Rule fails to include a similar statement. This should be remedied in the Final Rule and in the form of uniform disclosure concerning the FDIC's guarantee that we have suggested.

- Bondholders are generally entitled to accelerate principal and interest upon an "event of default" as established in the bond indenture. (By way of contrast, deposit instruments generally do not contain events of default or acceleration provisions);
- A bond "event of default" generally includes the failure to pay principal or interest when due (after any applicable grace period);
- Because the Interim Rule provides that the FDIC guarantee does not become effective until the issuer is put into receivership or bankruptcy, payment defaults can occur without the guarantee becoming effective;
- Bondholders, in that case, face the decision to either accelerate payments as a result of the event of default, or otherwise wait for a potential receivership or bankruptcy to make a claim via the FDIC guarantee process;
- In either case, the bond has contractually defaulted, and the return on investment for the bondholder has been substantially impaired vis-à-vis its original terms.

The above scenario will not be tolerated by traditional "rates" investors in government, government-guaranteed, and quasi-government securities. It does not fit their criteria for lack of credit risk and certainty of payment, as described previously. As such, it may substantially undermine the rate, curve, or duration trade that the original investment was intended to accomplish. Put simply, these investors seek interest rate risk but have no appetite for underlying credit risk.

The participation of "rates" investors is critical for the success of the TLGP Debt Guarantee Program in terms of both size and price. Without significant investments from the "rates" investor base, the product will be forced to find a pricing equilibrium acceptable to "credit" investors. This is an undeniably bad outcome for issuers of FDIC guaranteed debt because that clearing price will be prohibitively more expensive for issuers. To put the difference between "rates" and credit products in context, we offer the following snapshot of where "rates" products currently trade versus where credit products currently trade:[2]

Security	Rating	Spread to UST (bps)	Spread to LIBOR (bps)
"Rates" Products			
FNMA 3.875% due 2013	Aaa/AAA	T+143.8	L+44.5
FHLMC 4.125% due 2013	Aaa/AAA	T+147.3	L+42.1
FHLB 3.625% due 2013	Aaa/AAA	T+163.2	L+68.4
KFW 4.000% due 2013	Aaa/AAA	T+79.9	L-12.1
IADB 3.500% due 2013	Aaa/AAA	T+139.5	L+46.0
Credit Products			
Super-Regional Bank A due 2013	Aa1/AA+	T+375.0	L+287.7
Money Center Bank A due 2013	Aa2/AA-	T+410.0	L+315.9
Money Center Bank B due 2013	Aa2/AA-	T+440.0	L+347.0
Trust Bank A due 2013	Aa2/AA-	T+340.0	L+241.4

[2] As of October 31, 2008. "Spread to UST (bps)" represents the yield differential, in basis points, between the listed security and that of the prevailing U.S. Treasury note of similar maturity. "Spread to LIBOR (bps)" represents the yield differential between the listed security and that of the U.S. dollar swap curve.

Money Center Bank C due 2013	Aa3/AA-	T+520.0	L+418.6
Regional Bank A due 2012	Aa3/A	T+850.0	L+779.0
Trust Bank B due 2013	A1/AA-	T+325.0	L+222.0
Credit Card Thrift A due 2013	A1/A+	T+800.0	L+706.6
Super-Regional Bank B due 2013	A1/A+	T+775.0	L+681.3
Super-Regional Bank C due 2012	A1/A+	T+400.0	L+321.5
Super-Regional Bank D due 2012	A1/A+	T+650.0	L+566.9
Super-Regional Bank E due 2013	A1/A+	T+466.7	L+346.3
Super-Regional Bank F due 2013	A2/A-	T+750.0	L+653.2
Regional Bank B due 2012	A2/A-	T+500.0	L+440.2
Super-Regional Bank G due 2015	A3/A-	T+641.1	L+514.1
Super-Regional Bank H due 2012	A3/BBB+	T+1050.0	L+905.5
Regional Bank C due 2014	A3/BBB	T+850.0	L+737.2

There are three important observations regarding the above table. First, the yield differential between "rates" products, *i.e.* Fannie Mae, Freddie Mac, FHLB, and supranational debt, and credit products, *i.e.* money center, super-regional, regional, and other TLGP eligible bank debt, is remarkably wide. From one extreme to the other in the universe above, the lowest yielding "rates" product trades 970 bps lower in yield than the highest yielding credit product. Second, within the universe of credit products alone, there is substantial variance from one credit to another. The lowest yielding credit, in this example, yields 725 bps lower than the highest yielding credit. Third, the absolute level of spreads among the credit universe (T+ 597 bps on average in this example) represents a historically high yield for senior bank debt in comparison to the risk free rate.

In light of these observable differences between the pricing of "rates" and credit products, a guarantee scheme that does not satisfy the investment criteria of "rates" investors poses the following risks:

- The product, as it stands, is at significant risk of being shunned by "rates" investors, who buy medium-term securities in the context of T+ 80 to 165 bps, in favor of credit investors, who buy medium-term securities in the context of T+ 325 to 1,050 bps. Failure to attract significant numbers of "rates" investors will lead to smaller transactions and higher required yields.
- Access to the product is at a significant risk of being available only to a few of the largest and best-rated institutions who do not trade with a significant risk of default embedded in their senior obligations. Smaller and lower-rated institutions, including several super-regional and regional banks with assets in excess of $50bn and solid single-A ratings, will not be approved by many investors who refuse to take any form of credit risk, including risks to timeliness of repayment. Given the uncertainty of payment under the current FDIC guarantee proposal, these investors will simply not invest in FDIC guaranteed issuance if the underlying credits are perceived to have even a small risk of default.
- The debt issued under the Debt Guarantee Program is likely to be severely disadvantaged in comparison to that issued by foreign banks, such as those in the U.K., which benefit from a full government guarantee of principal and interest as it becomes due and payable.

Without amendment, therefore, the absolute size of the program and the number of institutions which it serves to support is likely to be significantly below the expectations of the FDIC, the industry, and all interested parties in the health of the U.S. banking system.

The solution to this problem involves a simple, easily executable change to the FDIC's guarantee language to make it one of "full and timely payment" of principal and interest. As you are aware, the United Kingdom recently implemented a guarantee program for its banks, and this is the type of model they adopted.[3] The guarantee, according to the U.K. Treasury, is "unconditional, irrevocable and ensures timely payment."[4] Its language is simple:

> …whenever the Eligible Institution does not pay any Guaranteed Liability on the date on which it becomes due and payable (the "Due Date"), the Guarantor shall, upon demand by a Beneficiary made in accordance with the Rules and following the expiry of any applicable grace period, pay the Guaranteed Liability.[5]

Whereas the FDIC's guarantee becomes effective at the date of receivership or bankruptcy, the U.K.'s guarantee becomes effective immediately upon a missed payment. And whereas the FDIC's guarantee involves a claims process followed by a single payment of principal and contractual interest due to the date of the claim (plus any period after the institution of the receivership or bankruptcy at the 3-month T-Bill rate), the U.K.'s guarantee simply steps in to pay interest and principal at the contracted rate as originally scheduled. In other words, upon a credit event, the current form of the FDIC's guarantee has the potential to drastically alter the payment schedule of a note in comparison to the original terms. The U.K.'s guarantee scheme, on the other hand, endeavors to completely preserve the scheduled payments according to the original terms.[6]

The success of the U.K. system has already been proven. To date, there have been three transactions in two currencies by two separate issuers under the U.K. Treasury guarantee program. The total proceeds of these issues, from Barclays and the Bank of Scotland, were approximately $8.7 billion. Importantly, the price paid by each issuer, despite a 65 bps differential in credit default swap levels on the day prior to the guarantee scheme's announcement, was indistinguishable.

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[3] The documentation relating to the UK 2008 Credit Guarantee Scheme is *available at* http://dmo.gov.uk/index.aspx?page=CGS/CGSIntro.

[4] *See* United Kingdom Debt Management Office, Market Notice of The Government's 2008 Credit Guarantee Scheme, Section 8 (Oct. 13, 2008) *available at* http://dmo.gov.uk/documentview.aspx?docname=cgs/press/mktnotice08.pdf&page=.

[5] Guarantee in Respect of the 2008 Credit Guarantee Scheme, Section 2.1 *available at* http://dmo.gov.uk/documentview.aspx?docname=cgs/press/cgsAMENDEDGUARANTEE.pdf&page=.

[6] Section 4.2 of the Guarantee in Respect of the 2008 Credit Guarantee Scheme further provides that neither the obligations expressed to be assumed by the UK Treasury as guarantor nor the powers or remedies conferred upon the beneficiaries by the guarantee are discharged, impaired or otherwise affected by the winding up, administration, liquidation or discharge of a participating institution. In view of the power the FDIC as receiver of a participating bank or the trustee-in-bankruptcy of another participating institution may have to affect the obligations of a participating institution upon its receivership or bankruptcy, we strongly recommend that the FDIC include a similar clarification in the Final Rule. For example, pursuant to Section 11(e)(1) of the Federal Deposit Insurance Act, the FDIC as receiver may disaffirm any contract, including a bond, of an insolvent depository institution and in such case damages payable to bondholders are limited to actual direct compensatory damages as of the date of the appointment of the receiver. Neither this power nor any other power that the FDIC as receiver or a trustee-in-bankruptcy may have in such capacity should affect the obligation of the FDIC as guarantor to pay principal and interest on the guaranteed debt in accordance with its original terms.

Issue Date	Issuer	Rating	Size (MM)	Maturity	Spread to Local Treasury (bps)	Spread to Local LIBOR (bps)
10/27/08	Barclays PLC	Aaa/AAA	€3,000	10/27/11	B+119.9	EURIBOR+25
10/30/08	Bank of Scotland PLC	Aaa/AAA	€3,000	11/05/10	B+136.3	EURIBOR+20
10/30/08	Bank of Scotland PLC	Aaa/AAA	£600	11/05/11	G+122	GBP LIBOR+25

"Rates" investors comprised the vast majority of demand for these transactions; both the size achieved and price paid provide tangible evidence of a successful guarantee scheme that attracts these types of investors. In contrast, since the TLGP was instituted, not one U.S. institution eligible to participate in the TLGP's Debt Guarantee Program has issued a bond eligible to be guaranteed under the program.[7]

Were the FDIC to alter its debt guarantee system to a form similar to that of the U.K. Treasury, Credit Suisse strongly believes that the Debt Guarantee Program under the TLGP would assist more banks, for greater size, and at a more favorable price. It would lure critical "rates" investors to the product, and would not leave a majority of banks unable to take advantage of the program. On behalf of many of these banks as clients of Credit Suisse, we believe this is the single most important element to avoid failure of the Debt Guarantee Program as it relates to guaranteed bank issuance in the debt capital markets.

The FDIC Should Require Uniform Disclosure of the Guarantee

The second critical factor related to the TLGP's Debt Guarantee Program and its efficacy in the capital markets is the disclosure of the guarantee. The disclosure needs to be clear and completely uniform across all issuances by all participants in the program. It is dangerous to the development of the FDIC guaranteed product to leave issuers separately responsible, in consultation with legal counsel, to produce their own description of the guarantee for use in prospectuses and other disclosure documents. In a market characterized by fear, to do so would be to inject the potential for investor paranoia surrounding each issuance. Every difference in language, however minute, would be scrutinized and cause confusion in the marketplace, adding cost and reducing available volumes. At the extreme, this scrutiny may influence investment decisions as investors favor a bank issuer with one set of language at the expense of another.

[7] *See* Bloomberg News Service, "Banks Avoid Bond Market Three Weeks After Guarantee" (October 31, 2008) *available at* http://www.bloomberg.com/apps/news?pid=20601103&sid=aaDHbkVueT04&refer=news. As noted in the Bloomberg article:

> Almost three weeks after the government threw its guarantee behind new bank bonds, no U.S. finance company has braved the market.
>
> While Citigroup Inc., JPMorgan Chase & Co. and Bank of America Corp. were the three largest U.S. banks issuing debt last year, they haven't sold dollar-denominated corporate bonds since August. Barclays Capital analysts estimated on Oct. 20 banks would sell as much as $600 billion of debt within six months using the U.S. guarantee.
>
> The delay is frustrating investors who expected government backing would spur banks to sell bonds, said Gregory Habeeb, a money manager at Calvert Asset Management Co. in Bethesda, Maryland. At the same time, yields over benchmark rates on investment-grade and high-yield debt are near record highs and the U.S. corporate bond market has remained all but shut.

Avoiding this disclosure risk is straightforward. Again, it has already been addressed successfully by the U.K. Treasury, who has provided standard language which participating institutions are required to use.[8] These institutions may not make any other disclosure or representation as far as the guarantee other than what the U.K. Treasury has provided. It is clearly listed on issuance announcements, in disclosure documents, and on the U.K. Treasury's website for public usage.

We strongly encourage the FDIC, whatever the scope of the final guarantee, to explicitly provide one set of guarantee disclosure for all banks participating in the program and to list this language publicly on its website. It is critical for the uniformity of the product, which in turn affects the universal access of banks and the equality of pricing among banks.

Conclusion

In summary, these items – modifying the scope of the guarantee and providing uniform, consistent disclosure of the guarantee for use by all issuers – are of absolutely critical importance to the success of the Debt Guarantee Program under the FDIC's Temporary Liquidity Guarantee Program. Should matters stay as originally drafted in the Interim Rule, the program will not achieve its stated objectives. Capital markets access will likely be restricted to only the top handful of institutions, and the U.S. banking system is likely to be further divided into winners and losers at the hands of a program which was drafted to accomplish the opposite. Credit Suisse strongly urges the FDIC to implement these modifications.[9] We are eager to assist in any way possible.

Thank you again for your consideration and should you have any questions regarding this letter, please contact the undersigned at 212-325-3559 or Joseph Seidel in our Washington Office at 202-626-3300.

Sincerely,

Fred Sherrill
Managing Director
CREDIT SUISSE SECURITIES (USA) LLC

[8] *See* Rules of the 2008 Credit Guarantee Scheme, Section 9 *available at* http://dmo.gov.uk/documentview.aspx?docname=cgs/press/cgsrules.pdf&page=.

[9] Credit Suisse has filed these comments now in the hope of encouraging action prior to the closing date of the comment period. We reserve the right to file additional comments nearer to such date.