



November 16, 2010

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

Re: Notice of Proposed Rulemaking related to Implementing Certain Orderly Liquidation Authority Provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Proposed Rule").

Dear Mr. Feldman,

Northwest Bank & Trust Company appreciates the opportunity provided by the FDIC to comment on the Notice of Proposed Rulemaking ("NPR") related to the Proposed Rule.

Introductory Matters

Our interest in this NPR arises primarily as a result of our licensing of Bank Sweep Manager, the industry's only turn-key solution for offering in-house sweep accounts utilizing repurchase agreements. Licensed to hundreds of financial institutions throughout the country, Bank Sweep Manager's success is in part dependent upon a consistent framework for the handling of claims made by creditors secured by securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States ("Government Securities") and as such, our comments are limited to one issue, namely, the last sentence of Section 380.2(c) of the Proposed Rule (hereinafter "Payment at Par Requirement"), which provides:

Proven claims secured by such security interests or security entitlements in securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States shall be valued for such purposes at par value.

It is the opinion of this commentator that the Payment at Par Requirement should be eliminated from the Proposed Rule.

Discussion

Although Government Securities are not thought to have credit risk that affect their market value, they are subject to fluctuation in market value due to changes in current interest rates and

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changes that are expected in the future. That being said, it is rare for a Government Security to have a market value equal to its par value. Moreover, because there is such a robust market for Government Securities, it is even rarer for there to be uncertainty as to the market value for a Government Security.

Although the market certainly alone would justify the elimination of the Payment at Par Requirement, other factors provide further support for this conclusion. First, the direct mandate of Dodd-Frank in section 209 is “to seek to harmonize applicable rules and regulations promulgated under this section with the insolvency laws that would otherwise apply to a covered financial company.” With respect to this requirement, the Payment at Par Requirement is inconsistent with the Bankruptcy Code. With limited statutory exceptions (none similar to the Payment at Par Requirement), Bankruptcy Code case law generally interprets fair value to mean fair market value. It is almost certain that a bankruptcy court would use the market value, and not the par value, of a Government Security to determine secured status under 11 USC section 506.

On a related note, except as expressly preempted, state law defines most of the legal rights of debtors and creditors. Upon default by a borrower, secured creditors have numerous remedies, including those set forth in the Uniform Commercial Code. If a creditor has a claim properly secured by a Government Security, the creditor is not limited in its recovery against the collateral to the extent of its par value, but to the greater of the amount of its claim or the market value it can realize upon sale. Admittedly, this result can be preempted by federal law, but it stands as further evidence that the Payment at Par Requirement is inconsistent with a broader context of debtor and creditor law that would otherwise apply.

In early 2009, the FDIC adopted amendments to 12 CFR Part 360, namely rules governing Processing of Deposit Accounts in the Event of an Insured Depository Institution Failure. This final rule establishes the FDIC’s practices with respect to, among other things, sweep accounts, where, as a result of the sweep transaction, a customer obtains a perfected security interest in a Government Security. It does not, however, address valuation issues. More importantly, it does not adopt anything similar to the Payment at Par Requirement. Consistency would suggest that both or neither should (and thus our primary interest in the NPR).

The Government Securities Act (“GSA”) in part governs disclosures to be provided to customers engaging in repurchase agreement transactions with certain financial institutions, including all insured depository institutions and potentially some that would become subject to the proposed rule. The regulations promulgated under the GSA specifically provide that daily confirmations must include the market value of the Government Security. The Payment at Par Requirement is clearly inconsistent with this disclosure requirement. Not only does it make this disclosure potentially meaningless for Government Securities trading at a discount, but for those Government Securities trading at a premium, a confirmation containing a market value becomes substantially misleading because the customer will not realize the market value in the event the Payment at Par Rule comes into play. It is quite curious that the rather detailed GSA requirements only apply to transactions involving Government Securities while the Payment at Par Requirement makes market values irrelevant only for those same Government Securities.

We suggest that the inconsistency with the disclosure requirement and underlying legislative and regulatory intent of the GSA further support the elimination of the Payment at Par Requirement.

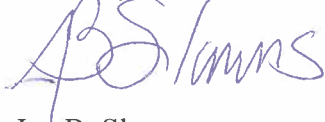
Much of this discussion has focused on underpayment to secured creditors in the event Government Securities are trading at a premium. In the event a Government Security is trading at a discount, the Payment at Par rule potentially shifts losses from the secured creditor to unsecured creditors or, in the worse case, to the taxpayer, both inconsistent with the clear direction of Dodd-Frank.

Conclusion

In conclusion, for the reasons set forth, we believe the Payment at Par Requirement set forth in the last sentence in Section 380.2(c) of the Proposed Rules should be removed prior to final adoption.

Again, we appreciate the opportunity to comment on the NPR. Please contact me at 563-388-2577 or jbslavens@northwestbank.com if you have any questions or would like to discuss these issues in further detail.

Sincerely,

A handwritten signature in blue ink, appearing to read "JBS/Slavens".

Joe B. Slavens
President/CEO
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