

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
United States
www.fdic.gov

Chris Barnard

01 December 2011

- **12 CFR Part 380**
- **RIN: 3064-AD84**
- **Calculation of Maximum Obligation Limitation**

Dear Sir.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking: Calculation of Maximum Obligation Limitation.

You are proposing rules to implement applicable provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). In accordance with the requirements of Dodd-Frank, the proposed rules govern the calculation of the maximum obligation limitation (MOL), as specified in section 210(n)(6) of Dodd-Frank. The MOL limits the aggregate amount of outstanding obligations that the FDIC may issue or incur in connection with the orderly liquidation of a covered financial company.

I support the proposed rules, which closely follow the statutory language. I also agree with the proposed definitions, particularly the definition of "fair value" and "obligation" under proposed § 380.10(b) and § 149.2. The proposed definition of fair value references "an orderly transaction" rather than a forced liquidation value or a distressed sale. I believe that this is reasonable and appropriate and is also consistent with your responsibilities as receiver. The proposed definition of fair value is also consistent with generally accepted accounting principles as promulgated under US Gaap. For example, Topic 820 (previously FAS 157) defines fair value as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date".¹ This requires the use of market data to measure fair value, and also provide guidance on the correct use of observable and unobservable inputs. This fair value hierarchy prioritises the input levels to the valuation methodology underlying fair value as follows:

¹ See Topic 820, Financial Accounting Standards Board.

Please note that the comments expressed herein are solely my personal views

Hierarchy	Input Type	Valuation Methodology
Level 1	Unadjusted quoted prices in active markets for identical assets or liabilities	Mark-to-market
Level 2	Quoted priced for similar instruments or other observables	Mark-to-matrix (interpolation)
Level 3	Unobservable inputs reflecting estimates and assumptions that market participants would use	Mark-to-model

I would only like to caution that it may not be possible to credibly or reasonable determine such fair values during an extended period of financial distress, particularly during a systemic crisis, as quoted prices may not be available, and unobservable inputs may not be sensible, realistic or verifiable. I would recommend that you should consider this possibility further in order to prepare some appropriate responses and contingencies.

Yours faithfully

Chris Barnard