



Federal Deposit Insurance Corporation

550 17th Street NW, Washington, D.C. 20429-9990

Legal Division

November 24, 2008

Mr. Thomas Kim
Associate Director, Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Debt Guarantee Program of the Federal Deposit Insurance Corporation

Dear Mr. Kim:

The Federal Deposit Insurance Corporation (the “FDIC”) respectfully submits this request for confirmation from the Securities and Exchange Commission (the “SEC”) of the FDIC’s interpretation of Section 3(a)(2) (“Section 3(a)(2)”) of the Securities Act of 1933, as amended (the “Act”), as it relates to the exempt status of certain senior unsecured debt (the “Senior Unsecured Debt”) to be issued by eligible entities pursuant to the Debt Guarantee Program component of the Temporary Liquidity Guarantee Program of the FDIC (the “Program”). As described in the Final Rule adopted by the FDIC’s Board of Directors on November 21, 2008, a copy of which is attached to this letter (the “Final Rule”), Senior Unsecured Debt issued between October 14, 2008 and June 30, 2009 by eligible entities that have not opted out of the Program will be fully and unconditionally guaranteed by the FDIC through June 30, 2012 on the terms and conditions set forth in the Final Rule.¹

Section 3(a)(2) generally provides for the exemption of certain securities from the general registration requirements of the Act. In relevant part, Section 3(a)(2) provides that “exempted securities” shall include “any security issued or guaranteed by the United States... or by any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States.” The FDIC, which was created by an act of the Congress of the United States and is controlled by a Board of Directors whose members are appointed by the President and confirmed by the Senate, is an instrumentality of the Government of the United States for purposes of Section 3(a)(2).

As described in the Final Rule, the FDIC is providing a full and unconditional guarantee of the payment obligation on Senior Unsecured Debt issued between October 14, 2008 and June 30, 2009 by “eligible entities” which generally include insured U.S. depository institutions (and certain affiliates), U.S. bank holding companies and certain U.S. savings and loan holding companies. As more specifically described in the Final Rule, the FDIC’s full and unconditional guarantee with respect to an issue of Senior Unsecured Debt will expire upon the earlier of (i) maturity of such Senior Unsecured Debt or (ii) June 30, 2012.

¹ All Senior Unsecured Debt issued by a participating entity will be guaranteed by the FDIC under the Program unless the participating entity elects to issue certain non-guaranteed debt as permitted in the Final Rule. We acknowledge that any such debt would not be an exempt security under Section 3(a)(2).

It is the view of the FDIC that any Senior Unsecured Debt that is guaranteed by the FDIC under the Program and that has a maturity that ends on or before June 30, 2012 would be a security exempt from registration under Section 3(a)(2) because such security would be fully and unconditionally guaranteed by the FDIC. The FDIC recognizes that if the maturity date of any Senior Unsecured Debt guaranteed by the FDIC under the Program has a maturity that extends beyond the expiration of the FDIC's guarantee under the Program, the FDIC would not consider such Senior Unsecured Debt to be a guaranteed security for purposes of Section 3(a)(2).

Each eligible entity that does not opt out of the Program by December 5, 2008 will be required to enter into a Master Agreement with the FDIC in order for the Senior Unsecured Debt of the entity to be guaranteed under the Program. The Master Agreement provides for certain procedural matters with respect to the FDIC's guarantee, including, among other things, (i) an obligation that the issuer of the guaranteed debt reimburse the FDIC for any guarantee payments made under the Program and (ii) certain ongoing notice and reporting requirements, including a requirement that the issuer of the guaranteed debt notify the FDIC of a payment default under such debt. In general, the FDIC will make guarantee payments in accordance with the procedural requirements set forth in the Final Rule upon demand from the duly authorized representative for the guaranteed debt holders, or if there is no such representative, upon demand from the individual debt holders. However, the Final Rule provides that even in cases where there is an authorized representative, individual debt holders who opt out from such representation may make demand for payment directly to the FDIC.

The Master Agreement also requires that the issuer of the guaranteed debt include certain provisions in the governing documents for such debt, include provisions for the subrogation of the FDIC to all rights of the holder of the debt against the issuer to the extent of guarantee payments made to the holder under the Program and a requirement that the holders of the debt (or their designated representative) execute an assignment to the FDIC of rights to receive payments from the issuer under the debt instrument to the extent of the guarantee payments made under the Program. The failure of the issuer to comply with any of the obligations imposed on it under the Master Agreement will not affect the FDIC's full and unconditional guarantee of all Senior Unsecured Debt that is then issued and outstanding. However, such failure could result in the FDIC, after consultation with the issuer's primary federal regulator, making a determination that the issuer should no longer be permitted to participate in the Program. The effect of termination of the issuer's participation in the Program would solely have prospective effects and would in no way affect the guarantee of Senior Unsecured Debt issued prior to such termination.

Based on the foregoing, we hereby respectfully request your confirmation of our understanding that, for purposes of Section 3(a)(2), Senior Unsecured Debt of participants in the Program, to the extent such Senior Unsecured Debt is fully and unconditionally guaranteed by the FDIC through its maturity, will be considered guaranteed by an instrumentality of the United States Government for purposes of Section 3(a)(2).

If you have any questions as to any of the foregoing, please contact Alan Cohen of my office at 703-562-2428. Thank you.

Kind regards,

The Federal Deposit Insurance Corporation

By: _____

John V. Thomas
Acting General Counsel

Enclosures