

Financial Guaranty Insurance Company Auction Guidance - published January 5, 2010

In connection with the Auction scheduled to occur on Thursday, January 7, 2010 in respect of credit derivatives transactions referencing Financial Guaranty Insurance Company ("FGIC"), the Credit Derivatives Determinations Committee for the Americas (the "DC") has, at the request of several market participants, resolved to publish this statement in order to facilitate the calculation of the outstanding principal balance of any Deliverable Obligation delivered pursuant to a transaction arising as a result of a Physical Settlement Request or a Limit Order Submission placed in the Auction.

THE DC HAS PUBLISHED THIS STATEMENT SOLELY AS PRACTICAL GUIDANCE TO FACILITATE SETTLEMENT OF TRANSACTIONS ARISING OUT OF THE FGIC AUCTION. MARKET PARTICIPANTS ARE RESPONSIBLE FOR MAKING SUCH CALCULATIONS IN RESPECT OF THEIR OWN PHYSICAL SETTLEMENT REQUEST AND LIMIT ORDERS. THE DC DOES NOT PROVIDE ANY ASSURANCE THAT THE GUIDANCE DESCRIBED HERE WILL OR MUST BE PRECISELY FOLLOWED BY ANY MARKET PARTICIPANT, INCLUDING ANY DC MEMBER. Furthermore, there is no assurance that the DC will, in the future, publish guidance of this type.

The DC notes that all of the Deliverable Obligations on the Final List for the FGIC Auction are asset-backed securities in respect of which FGIC has provided financial guarantee insurance policies. For each Deliverable Obligation specified in a Notice of Physical Settlement ("NOPS") for a Representative Auction-Settled Transaction ("RAST"), the "outstanding principal balance", as that term is used in the 2003 ISDA Credit Derivatives Definitions, should therefore reflect the principal amount owed or potentially owed by FGIC under the corresponding policy, rather than the principal amount outstanding in respect of the asset-backed security itself and, therefore, the "adjusted factor" in respect of a particular asset-backed security as of its specified Delivery Date will be relevant.

While generally equivalent in most circumstances, amounts owed by the issuer and the Reference Entity may differ from one another where the issuer of an asset-backed security has failed to make a principal payment and the insurer has failed to pay on claims in respect of that amount. PLEASE NOTE, therefore, that, in specifying an outstanding principal balance in a NOPS, it may be necessary to add the amount of insurance payments past due to the amount of the relevant certificate principal balance.

Some market participants have noted that the market convention for denoting the outstanding principal balance of certain asset-backed securities is to cite the "principal factor". These principal factors, however, do not take account of whether any relevant financial insurer has made any principal payments that the issuer of the asset-backed security failed to make (i.e. the outstanding principal balance should be inclusive of adjustments to reflect unpaid claims as of the Delivery Date for that Deliverable Obligation). The most reliable source for the adjusted factor is the most current remittance report for the Deliverable Obligation as of the relevant Delivery Date rather than a Bloomberg screen shot, which may not be as up to date. Where the most current remittance report as of the relevant Delivery Date specifies a factor that does not include the unpaid amounts due from the Reference Entity, such factor must be adjusted accordingly. In order to minimize breaks, parties should provide a copy of the relevant remittance report in support of the adjusted factor used to calculate the outstanding principal balance for any Deliverable Obligation specified in their NOPS.

In order to determine the outstanding principal balance for any Deliverable Obligation under a credit derivative referencing FGIC, market participants may therefore need to add to the stated certificate principal balance the amount of any claims owed but unpaid by FGIC in respect of that particular security. This may, in some cases, be achieved by adding certain of the figures listed as "losses" to the stated principal balance factor for the relevant asset-backed security. Some of the servicer reports for the relevant asset-backed security may state the amount owed but unpaid by the issuer and/or the insurer on a cumulative, rather than month to month basis. Where the report does not do so, market participants may consider taking the following steps:

- 1) Check the Bloomberg screen shot for the note.

- 2) If the Bloomberg screen shot shows a monthly loss breakdown, refer to the servicer report for the loss month. The relevant servicer report should show whether FGIC made good on the loss. A worked example of how to interpret a servicer report in this respect is set forth in the *Syncora Guarantee Inc. Auction Guidance*, published on May 26, 2009. This is available on the ISDA website: Click [here](#) to view. Market participants should contact the trustee for the relevant bond to receive copies of servicer reports if they do not already have them.
- 3) If the Bloomberg screen shot only shows a cumulative loss breakdown, a market participant will need to go through monthly reports going back to the note's issue date to determine definitively whether any amounts are owing from FGIC above the stated certificate principal balance.

In order to minimize breaks, parties intending to deliver specific bonds into Physical Settlement Requests or Limit Order Submissions may wish to consult with their Participating Bidder counterparty as to the specific calculation, particularly for bonds that have recently missed payments (including any payments that might have been due prior to the Delivery Date).