

FDIC Releases Final Covered Bond Policy Statement

On July 15, the Federal Deposit Insurance Corporation (FDIC) approved for publication in the Federal Register the final Covered Bond Policy Statement (the "Policy Statement"), which contains several revisions and clarifications to the FDIC's April 23, 2008 Interim Final Policy Statement. The Policy Statement provides "guidance on the availability of expedited access to collateral pledged to secure certain covered bonds, in a receivership or conservatorship, after the FDIC decides whether to terminate or continue the transaction."¹

As we described in our prior *Dechert OnPoint*², covered bonds are general obligation bonds secured by a pledge of a pool of loans that remain on the issuer's balance sheet. The Policy Statement contains several important changes from the interim statement, including the calculation of damages that the receiver will pay to holders of covered bonds in an insolvency proceeding and an extension of the term limit for covered bonds from 10 years to 30 years.

In the Policy Statement, the FDIC did not make important changes proposed by leading industry groups, such as the Commercial Mortgage

Securities Association and the American Securitization Forum, in comment letters directed to the interim statement. These comments sought to expand the definition of "eligible mortgages" to include commercial mortgages, residential mortgages other than those first lien loans permitted in the interim statement, and other types of non-mortgage assets. In addition, the Policy Statement retained a requirement set out in the interim statement that an issuer not be permitted to issue covered bonds in excess of 4% of the issuer's total liabilities. As a result, we believe that the potential value of covered bonds as a financing and liquidity tool for U.S. institutions has not yet been realized.

We do, however, note that many of our bank and non-bank clients are looking into structuring transactions that utilize covered bond structures but do not fall within the narrow bounds of the Policy Statement. The Policy Statement in no way limits the ability of bank and non-bank institutions to enter into such a transaction and such a transaction, even if not falling within the bounds of the Policy Statement, may still offer meaningful benefits to issuers and investors as an alternative to traditional securitization.



For more information about covered bonds in general or the Policy Statement, please contact Joseph Gatti at (+1 202 261 3436; joseph.gatti@dechert.com), David Forti at (+1 215 994 2647; david.forti@dechert.com), or any other Dechert Finance and Real Estate attorney.

¹ Federal Deposit Insurance Corporation Covered Bond Policy Statement (July 15, 2008), available at <http://www.fdic.gov/news/news/press/2008/pr08060a.html>.

² "Covered Bonds: FDIC action might spur U.S. covered bond growth," *Dechert OnPoint*, Issue 7 (April 2008), available at http://www.dechert.com/library/Finance_and_Real%20Estate_04-08_7_Covered_Bonds.pdf

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