

# LOWENSTEIN SANDLER PC CLIENT ALERT

## GLOBAL FINANCIAL CRISIS GROUP

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### U.S. DEPARTMENT OF THE TREASURY ASSET MANAGER SELECTION CRITERIA

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**Clients and friends who desire to apply as an asset manager or a service provider for the U.S. Department of the Treasury ("Treasury") in connection with the Troubled Asset Relief Program (the "TARP") established pursuant to the Emergency Economic Stabilization Act of 2008 (the "EESA") must respond no later than 5:00pm EST on October 8, 2008. As the application requires a comprehensive response, there is a relatively narrow window for clients and friends to apply.**

In a series of releases and notices on Monday, October 6, 2008, Treasury announced its procedures to select securities and whole loan asset managers and an infrastructure service provider for the portfolio of troubled assets it intends to acquire under the TARP established pursuant to the EESA. Treasury has indicated that it expects to engage multiple managers and sub-managers, based on asset and market expertise. Applicants must submit a response specific to the proper notice of the three notices released on Monday, October 6, 2008 by Treasury (securities asset manager; whole loan asset manager; and custodian, accounting, auction management and other

infrastructure services provider). Qualifications for smaller and minority- and women-owned financial institutions interested in applying will be forthcoming separately from Treasury.

#### ELIGIBILITY STANDARDS FOR APPLICANTS

*Securities Asset Managers ("SAM")* will handle RMBS, CMBS and CDO securities, plus other securities acquired by Treasury to promote market stability. Each SAM must meet the following qualifications, among others:

- Must be a registered investment advisor under the Investment Advisers Act of 1940, as amended;
- Must not be subject to any pending or current enforcement actions or regulatory investigations;
- Must have been continuously engaged as a principal business in managing securities, obligations, or other instruments that are based on or related to residential and/or commercial mortgages for the last 5 years;
- Must have received an unqualified auditor's opinion for the last 5 years; and
- Must have at least \$100 billion in

dollar-denominated fixed income assets under management.

*Whole Loan Asset Managers ("WLAM")* will handle first and second lien residential mortgage loans, home equity loans, commercial mortgage loans and other mortgage loans acquired by Treasury to promote market stability. Each WLAM will be required to provide a suite of services, ranging from pre-transactional diligence on loans offered for sale, through determination of fundamental loan values and loan acquisition, through loan servicing and foreclosure mitigation, to liquidation of physical assets and underlying property, if necessary. Each WLAM must meet the following qualifications, among others:

- Must be established and regulated under U.S. federal, state or territorial law;
- Must not be subject to any pending or current enforcement actions or regulatory investigations;
- Must have been continuously engaged as a principal business in

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managing whole loan assets for the last 5 years; and

- Must have at least a \$25 billion mortgage loan portfolio or the ability to scale capacity to such level.

*A Custodian, Accounting, Auction Management and Other Infrastructure Service Provider (the "Service Provider")* will provide infrastructure services for the entire portfolio of troubled mortgage-related securities and whole mortgage loans, including custody, asset tagging, asset pricing and valuation, cash management, accounting, management reporting, federal government financial reporting, and auction management services for reverse auctions and for other asset acquisition mechanisms. The Service Provider must meet the following qualifications, among others:

- Must be established and regulated under U.S. federal, state or territorial law;
- Must not be subject to any pending or current enforcement actions or regulatory investigations;
- Must have at least \$500 billion in domestic assets under custody; income assets under management; and

- Must be prepared to begin offering services and personnel on October 11, 2008.

### **NARROW APPLICANT WINDOW MEANS CLIENTS AND FRIENDS NEED TO ACT QUICKLY**

As previously stated, a comprehensive initial application is required to be delivered no later than Wednesday, October 8, 2008 at 5:00 p.m. (Eastern Standard Time). Members of the Lowenstein Sandler Investment Management and Mortgage Banking Groups are available to counsel on the requirements and obligations of securities asset managers, whole loan asset managers service providers, to assist in creating and delivering a completed application, and to otherwise provide advice regarding TARP and EESA.

Lowenstein Sandler's Investment Management and Mortgage Banking Groups will continue to monitor and report on developments regarding the issues affecting investment managers, pooled investment vehicles, secondary mortgage market participants (such as mortgage loan servicers, master servicers and custodians) and other matters of interest to our clients and friends.

Please contact any of the following attorneys for further information on the matters discussed in this Client Alert.

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